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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KRKH, INC., an Illinois)
corporation,)
)
Complainant,)
)
vs) No. PCB 00-25
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
STUDIO 21 LIMITED, JOE and)
THERESA SCLAFINI, and)
MIDWEST BANK & TRUST as)
trustee ultl#74-11-1383,)
)
Respondents.)

The following is the transcript of a hearing held in the above-entitled matter taken stenographically by MICHELE J. LOSURDO, CSR, a notary public within and for the County of DuPage and State of Illinois, before AMY MURAN FELTON, Hearing Officer, at 100 West Randolph Street, Suite 11-500, Chicago, Illinois, on the 19th day of January, 2000, A.D., commencing at 10:30 a.m.

1 PRESENT:

2

3

WOLFE and POLOVIN
BY: MR. RICHARD A. WOLFE
180 North LaSalle Street
Suite 2420
Chicago, Illinois 60601
(312) 782-1681

6

Appeared on behalf of the Complainant;

7

8

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: MR. STEPHEN C. EWART and
MR. LYNN E. DUNAWAY
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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Appeared on behalf of the Respondent,
Illinois Environmental Protection
Agency.

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13

ALSO PRESENT:

14

John Knittle, Anand Rao and Catherine Glenn.

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1 MR. WOLFE: Madam Hearing Officer, for the
2 record, my name is Richard Wolfe, W-o-l-f-e, of the law
3 firm of Wolfe AND Polovin, P-o-l-o-v-i-n, 180 North
4 LaSalle Street. I represent the petitioner KRKH, Inc.,
5 an Illinois corporation in the matter of KRKH, Inc.,
6 versus Illinois Environmental Protection Agency, Studio
7 21, Limited, Joe and Theresa Sciafini and Midwest Bank &
8 Trust as trustee under trust number 794-11-1383, who
9 have all been identified as interested parties in this
10 matter as respondents. This matter is docketed as PCB
11 00-25.

12 HEARING OFFICER FELTON: Mr. Wolf, I'll just
13 have the respondents introduce themselves and then we'll
14 start with a little bit of opening information on behalf
15 of the Board before we proceed if that's okay.

16 MR. WOLFE: I was going to introduce the people
17 that were going to testify, but we can do that, that's

18 fine.

19 HEARING OFFICER FELTON: Yeah. We'll do that at
20 a later moment. Thanks.

21 Will the respondents that are present today
22 please introduce themselves?

23 MR. EWART: Yes. My name is Steve Ewart. I'm
24 an attorney for Illinois EPA, and to my right is Lynn

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1 Dunaway who is an environmental protection specialist in
2 the groundwater section of the division of public water
3 supplies Illinois EPA.

4 HEARING OFFICER FELTON: Good morning and
5 welcome to all of you. I am Amy Muran Felton, and I am
6 a hearing officer with the Illinois Pollution Control
7 Board. I have been assigned to preside over this
8 hearing today in the matter of KRKH, Inc. versus
9 Illinois Environmental Protection Agency, Studio 21,
10 Limited, Joe and Theresa Sciafini and Midwest Bank &
11 Trust as trustee number 74-11-1381, docketed by the
12 Board as PCB 00-25.

13 Today is Wednesday, January 19th, 2000, and
14 it is approximately 10:40 a.m. I note that aside from
15 representatives for the parties and the Board, there do

16 not appear to be any members of the public present here
17 today. This hearing was noticed pursuant to Section
18 102.162 of the Board's procedural rules regarding notice
19 of hearings.

20 This hearing is being held pursuant to
21 Section 106.604 of the Board's procedural rules
22 regarding water well setback exceptions. The hearing
23 will be governed in accordance with the Illinois
24 Environmental Protection Act and the Board's procedural

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1 rules.

2 This hearing will be conducted in accordance
3 with Section 102 point subpart J of the Board's
4 procedural rules regarding regulatory hearings. I note
5 that this hearing is intended to develop a record for
6 review of the petition for water well setback exception
7 by the entire Pollution Control Board.

8 I will not be deciding this case however. It
9 is the Pollution Control Board that will be making this
10 decision. They will review the transcript of this
11 proceeding and the remainder of the record and render a
12 decision in this matter.

13 My job is to ensure that an orderly hearing

14 and a clear record is developed so that the Board can
15 have all the necessary information before rendering a
16 decision. After the hearing, the parties will have the
17 opportunity to submit posthearing briefs. These, too,
18 will be considered by the Board. The parties may also
19 waive their opportunity to submit posthearing briefs.

20 All witnesses will be sworn and subject to
21 cross-questioning. The parties may ask a question of
22 any witness. Any question asked by Board staff and the
23 hearing officer are not intended to express any
24 preconceived notions or bias, but only to build a

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1 complete record for review by the Board that are not
2 present here today.

3 Before we begin with the continued
4 introduction of the parties, I would like to introduce
5 the staff members that are here on behalf of the Board.
6 Present today with us is Catherine Glenn, attorney
7 assistant to board member Ron Flemal, Anand Rao of the
8 Board's technical unit and John Knittle, the chief
9 hearing officer with the Board.

10 We'll move on again with the introduction of
11 the parties. Mr. Wolfe, if you could introduce the

12 witnesses that you have with you today please.

13 MR. WOLFE: Thank you. I will ask each of the
14 witnesses to identify themselves by stating their name
15 and spelling their last and giving your business
16 address, and, Shilu, we'll start with you.

17 MR. AMIN: My name is Shilu Amin, A-m-i-n. My
18 business address is 199 Sherwood Drive, Wood Dale,
19 Illinois 60191.

20 MR. MANKOWSKI: Robert Mankowski,
21 M-a-n-k-o-w-s-k-i with Environmental Protection
22 Industries, Shilu's consultant. Address 16650 South
23 Canal Street, South Holland, Illinois.

24 MR. WOLFE: And assuming that the motion to

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1 allow the additional witness is granted, Doug.

2 MR. HARMON: Doug Harmon with DRW Services, 600
3 East Joe Orr Road, Chicago Heights, Illinois.

4 HEARING OFFICER FELTON: All right. Thank you.
5 And I believe Mr. Ewart introduced Lynn Dunaway who is
6 testifying on behalf of the Agency.

7 MR. EWART: I already have, yes.

8 HEARING OFFICER FELTON: Are there any
9 representatives on behalf of Studio 21, Limited, Joe and

10 Theresa Sclafini and Midwest Bank?

11 It appears that there is no one present at
12 this time on their behalf. I note for the record that
13 there is no one here on behalf of either Studio 21,
14 Limited, Joe and Theresa Sclafini or Midwest Bank.

15 Referring to the outstanding motion that's
16 currently pending before us, to my knowledge there is
17 only one and that is KRKH's motion filed January 13 to
18 call an additional witness to testify at hearing today.
19 Are there any objections to KRKH's motion?

20 MR. EWART: I have no objection.

21 HEARING OFFICER FELTON: Seeing that there are
22 no objections, KRKH's motion to call an additional
23 witness to testify at hearing today is granted.
24 Mr. Wolfe, that is your third witness?

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1 MR. WOLFE: That is correct. And he has been
2 introduced as Doug Harmon from DRW. The fourth
3 gentleman that we brought with us today who will not be
4 testifying, is also from DRW. Glen, do you want to
5 introduce yourself.

6 MR. MOLDER: My name is Glen Molder and I'm vice
7 president of DRW Services.

8 HEARING OFFICER FELTON: Thank you. All right.
9 Are there any other outstanding or prehearing motions
10 that the parties would like to present before we
11 proceed?

12 MR. WOLFE: The only motion that I would like to
13 make, Madam Hearing Officer, is with respect to the fact
14 that certain respondents to this action, the Sclafinis,
15 Studio 21, the land trust, I would like the record to
16 reflect that no response has been filed to the petition
17 to the water well setback exception up to and including
18 the date of the hearing. Therefore, as to those
19 respondents, I am requesting that the matter be treated
20 as a default matter and that the matters contained in
21 the petition be confessed against those respondents who
22 have chosen neither to appear here today nor respond to
23 the petition.

24 HEARING OFFICER FELTON: Do you have any

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1 response to that?

2 MR. EWART: No, I don't.

3 HEARING OFFICER FELTON: I will note for the
4 record that the respondents have not filed any such
5 response prior to or at least at this time to hearing in

6 this matter. However, your motion, which I deem a
7 motion -- oral motion for default is not a motion that I
8 could rule on as it's dispositive of these parties.
9 However, that is something that you can argue if you
10 wish to in a posthearing brief to the Board. Okay?

11 MR. WOLFE: Okay.

12 HEARING OFFICER FELTON: Is there any other
13 outstanding issues before we proceed?

14 Okay. Great. I first want to ask whether or
15 not the parties would like to give an opening statement
16 on behalf of their clients --

17 MR. WOLFE: I would.

18 HEARING OFFICER FELTON: -- or would they prefer
19 to just proceed?

20 MR. WOLFE: I would prefer to give just an
21 overview.

22 HEARING OFFICER FELTON: Okay. Great. We'll
23 start first with you, Mr. Wolfe, then we'll start with
24 Mr. Ewart.

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1 MR. WOLFE: Thank you. We're here today because
2 KRKH is the owner of a piece of property at 17W532 Lake
3 Street in Addison, DuPage County, Illinois. KRKH

4 purchased the property in March of 1999. At the time
5 the property was purchased, the environmental condition
6 of the property was poor and the property had previously
7 been a problem with respect to the environmental
8 condition.

9 My client, KRKH, purchased the property with
10 the understanding that it would complete the remediation
11 and would remodel structures on the property that were
12 somewhat dilapidated and make this property a good
13 looking gasoline service station and mini mart
14 consistent with what we've seen with new properties that
15 are being built today.

16 In the process, KRKH contracted with DRW to
17 install underground storage tanks, piping, monitoring
18 devices, all of those pieces of equipment and materials
19 necessary to provide for a system of preventing further
20 problems environmentally with the property. In 1995,
21 there was a spill detected on the property, and the
22 property was considered somewhat risky. There were
23 groundwater problems involved.

24 All of these problems were addressed by KRKH

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2 purchased the property. In addition, the equipment that
3 DRW was going to install on the property was equipment
4 that not only met EPA standards, but exceeded EPA
5 standards concerning safety and what would happen in the
6 event of an emergency situation such as a spill, leakage
7 or other detection of fuels not being present in the
8 tank.

9 At the same time, KRKH continued the
10 remediation with EPI for the property and, in fact, at
11 the same time tanks were being removed by EPI, there
12 were tanks that were permitted to be installed by DRW.
13 There was a well on the property on this site that is
14 located approximately 80 feet from the new pit
15 containing the underground storage tanks.

16 The EPA on July 14th, 1999, issued its
17 concurrence letter indicating that notwithstanding the
18 fact that the well on KRKH's property was less than 200
19 feet from the pit, that it was satisfied that the
20 installation of the underground tanks 80 feet from this
21 well would not pose a risk and, therefore, gave the okay
22 to install the tanks at that location.

23 The process continued. KRKH obtained all
24 permits necessary from the state, from the EPA, from all

1 governmental bodies until the permit process reached the
2 Board of Health of DuPage County. The property is
3 located, I believe, in unincorporated DuPage County and
4 for that reason DuPage County was involved in the
5 process rather than the city of Addison.

6 When the permit application reached the Board
7 of Health, a notice was given that according to their
8 records, there was another well located on the property
9 at 17W516 Lake Street in Addison that was, according to
10 their records, within 200 feet from the new location of
11 the underground storage tanks. This well is located on
12 the properties owned in trust by the Sclafinis, the
13 respondents who have been noticed as to all the
14 proceedings here today and have not appeared.

15 It is that well that brings us before this
16 body today as it is now necessary for KRKH, for Shilu
17 Amin to receive from the Pollution Control Board a
18 waiver of the minimum setback requirement of 200 feet.
19 That waiver could have been granted by the owners of the
20 property in June and July of 1999. They were contacted
21 in an effort to obtain such a waiver and they refused to
22 waive the exception.

23 We are now before this Board to have the
24 exception waived because we believe that the location of

1 the new underground storage tanks as situated in
2 relation to the well located on the affected property of
3 the Sclafinis will have no environmental impact on that
4 well notwithstanding the fact that it is less than the
5 200 feet as prescribed by Section 14.2 of the act.

6 Testifying today will be Mr. Amin, the owner
7 of the property, a representative from DRW who will
8 further explain the supplement that was provided to the
9 Pollution Control Board containing documentation
10 relating to the underground storage tanks, piping system
11 and monitoring system and Mr. Mankowski from
12 Environmental Protection Industries, who I will refer to
13 as EPI, who will testify as to tests that were performed
14 on the well of the affected property as well as the well
15 on the KRKH property and other issues relating to the
16 environmental impact of having the new underground
17 storage tank situated less than 200 feet from the well
18 located on the affected property.

19 HEARING OFFICER FELTON: Thank you, Mr. Wolfe.
20 Mr. Ewart, do you have any opening statement on behalf
21 of the Agency?

22 MR. EWART: Just briefly. The EPA is designated
23 as the respondent in this proceeding. We filed a
24 response to the original petition on September 2nd,

1 1999. I have one witness here, Lynn Dunaway, who will
2 testify and supplement the response that we made in
3 September. Thank you.

4 HEARING OFFICER FELTON: Great. Would anyone
5 else like to make an opening statement before we proceed
6 with the testimony of the petitioner?

7 Seeing that no one else would like to make
8 such an opening statement, we will proceed with the
9 testimony of the petitioner. If you want to proceed,
10 Mr. Wolfe, with your first witness.

11 MR. WOLFE: Has everybody been sworn?

12 HEARING OFFICER FELTON: No. Actually, we could
13 do that now, all at once, however that works best.

14 MR. WOLFE: Everybody who's going to testify.

15 HEARING OFFICER FELTON: Everyone who's going to
16 testify.

17 (Witnesses duly sworn.)

18 SHILU AMIN,
19 having been first duly sworn, was examined and testified
20 as follows:

21 DIRECT EXAMINATION

22 by Mr. Wolfe

23 Q. Shilu, would you please state your name and
24 spell your last name?

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1 A. Shilu Amin, A-m-i-n.

2 Q. And what is your business or occupation?

3 A. I'm a gasoline station owner.

4 Q. Are you an officer of the corporation known as
5 KRKH, Inc.?

6 A. Yes, I am.

7 Q. And what is KRKH, Inc.?

8 A. It's an Illinois corporation that's going to run
9 the gasoline station at 17 West 532 Lake Street.

10 Q. Is KRKH also the owner of the property?

11 A. Yes, it is.

12 Q. And from now on when I refer to the property,
13 I'll be referring to your site at 17 West 532 Lake
14 Street in Addison, Illinois, okay?

15 A. Correct.

16 Q. When did you first become interested in
17 purchasing the property?

18 A. June of '98.

19 Q. Did you contact somebody at that time?

20 A. Yes, the owner.

21 Q. Who was that?

22 A. The owner.

23 Q. And at that time, did you have discussions with
24 him concerning the purchase of the property?

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1 A. Yes, I did.

2 Q. And what was the nature of those discussions?

3 A. I wanted to purchase -- and I wanted -- the
4 business at that property was running at that time, and
5 I wanted to buy it, clean it up and start a new store
6 from there.

7 Q. What kind of business was operating at that
8 time?

9 A. A gasoline station.

10 Q. And was that a gasoline station that serviced
11 the general public?

12 A. General public as well as house accounts that
13 they had.

14 Q. When you say house accounts, what do you mean?

15 A. Diesel companies around in that area had
16 accounts there, so their trucks could come in and fill
17 up.

18 Q. Was the majority of the business at that time

19 house accounts?

20 A. Yes, it was.

21 Q. With trucks and businesses coming in?

22 A. Yes.

23 Q. Rather than cars from the general public --

24 A. Correct.

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1 Q. -- and the community? And did you have any
2 discussions with him at that time concerning the
3 condition of the property?

4 A. Yes, I did.

5 Q. And what were those discussions?

6 A. He had advised me that there was a leak I
7 believe in '95. A lot of the work was done for cleanup
8 through EPI, and there was -- the incident had to be
9 classified and closed out and there was some remediation
10 that needed to be done.

11 Q. And when you say a leak, you're talking about a
12 leak in an underground storage tank?

13 A. Correct.

14 Q. And did he indicate to you at that time what he
15 was doing at that time concerning cleaning up the
16 property?

17 A. He had cleaned it up. EPI did the cleanup work,
18 and they were monitoring. They had monitoring wells
19 around the permitted property.

20 Q. And that's all that was being done?

21 A. Correct.

22 Q. What was the condition of the station at that
23 time -- the gas station?

24 A. It was a rundown station. It was an old service

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1 station with two bays and pretty much an eyesore. I
2 live two blocks away, and the property was in bad shape.
3 The pumps were just sitting there. They could be pushed
4 over. It wasn't a safe place.

5 Q. Did you contact anybody after your discussion
6 with the owner concerning the environmental condition of
7 the property?

8 A. Yes, I did. I contacted EPI.

9 Q. And who did you talk to at EPI?

10 A. I talked to Michael Muso.

11 Q. And he's the owner of EPI?

12 A. Correct.

13 Q. And what were those discussions?

14 A. We sat down and talked about what we could do to

15 the property to clean it up and to renovate it and make
16 a new station out of it.

17 Q. Did you discuss the potential cost of that at
18 that time?

19 A. Yes, I did.

20 Q. And did you eventually make a decision to
21 purchase this property?

22 A. Yes, I did.

23 Q. And did you enter into a contract to purchase
24 it?

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21

1 A. Yes, I did.

2 Q. And as part of that contract, did you agree to
3 purchase the property as is?

4 A. Yes, I did.

5 Q. At the time that you decided to purchase the
6 property, what were your business plans for the
7 property?

8 A. I wanted to clean up the site, whatever was left
9 to get the incident closed out plus put in new tanks.
10 The tanks were probably about 20 years old, and I didn't
11 want any problems because I planned on being there for a
12 long period of time.

13 Q. Was one of the options presented to you simply
14 relining the tanks?

15 A. Yes, it was.

16 Q. And you chose not to do that?

17 A. Correct.

18 Q. And instead installed new tanks?

19 A. Correct.

20 Q. What else were part of your business plans?

21 A. To renovate the store and make it into a little
22 minimart and pretty much convert the whole property into
23 a new business.

24 Q. And that business would include providing

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1 gasoline to people in the community and people
2 traversing the streets around your station --

3 A. Correct.

4 Q. -- rather than just having house accounts and
5 selling to businesses, correct?

6 A. Correct.

7 Q. And you eventually did purchase the property,
8 did you not?

9 A. Yes, I did.

10 Q. When was that?

11 A. March of '99.

12 Q. And after you purchased the property, what did
13 you do to complete your business plan?

14 A. I contracted with EPI and DRW, EPI to do the
15 site classification and remediation as well as DRW to
16 install -- EPI also to remove the underground storage
17 tanks, DRW to do all the rest of the work for the
18 outside, the new tanks, new pumps, piping.

19 Q. And in developing that plan with DRW for the
20 installation for the underground storage tanks, did you
21 choose a location for those tanks?

22 A. We sat down with DRW and the best feasible
23 option was that, what we came up with.

24 Q. Was the place where you eventually decided to

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1 locate your tanks on your property; is that correct?

2 A. Correct.

3 Q. And what went into your decision to locate the
4 tanks at that location?

5 A. We wanted -- there was no canopy at the
6 location. We wanted to put up a canopy. We could have
7 done that over the old tanks, but if something were to
8 happen, we would have to be tearing everything down, and

9 since we were taking new tanks out, I believe it's about
10 20 feet further away from where the original tanks sat.

11 Q. When you say further away, in what location --
12 in what direction would that be?

13 A. East.

14 Q. Were there also issues concerning the Illinois
15 Department of Transportation?

16 A. Yes, it was.

17 Q. What issues were those?

18 A. IDOT, they wanted to make sure that the
19 deliveries for gasoline when they came in they weren't
20 backing out onto Lake Street to come out of the station,
21 and that's one of the main reasons why we moved the
22 tanks where they are, so they could come in and go out
23 the other exits. They don't have to back out onto Lake
24 Street.

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1 Q. Concerning where the tanks are situated today,
2 did IDOT give its approval for that location?

3 A. Yes, it did.

4 Q. And they were satisfied that for safety purposes
5 concerning tanker trucks and vehicular traffic going
6 onto the street that that was a safe location for the

7 tanks?

8 A. Yes, they did.

9 Q. And they signed off on it, correct?

10 A. Yes.

11 Q. Did you eventually begin work after you
12 purchased the property on the location?

13 A. Yes, we did.

14 Q. What work did you do?

15 A. We had -- removal of underground storage permits
16 from the State Fire Marshal as well as installation
17 permits from the State Fire Marshal, and I believe in
18 June of '99 the tanks were taken out. Two weeks later
19 the tanks were scheduled to be put in. That's when they
20 were put in the ground.

21 Q. And the tanks that we're talking about are the
22 underground storage tanks that were previously located
23 on the property, those were removed pursuant to permit,
24 correct?

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25

1 A. Correct.

2 Q. And the new tanks were installed in the
3 ground --

4 A. Correct.

5 Q. -- also pursuant to permits?

6 A. Correct.

7 Q. Was any other work done on the property at that
8 time?

9 A. Just the site classification was done and the
10 contaminated dirt was taken away.

11 Q. When you talk about site classification, you're
12 talking about a report prepared by EPI?

13 A. Correct.

14 Q. Did something happen during the installation of
15 the new underground storage tanks?

16 A. We ran into a problem with DuPage County Health
17 Department. They informed us that there was an
18 underground water well less than 200 feet which neither
19 I nor DRW had picked up because it was hidden. It's
20 underground.

21 Q. Now, in fact, at the time that the underground
22 storage tanks were situated on your property, you had a
23 water well on your property, correct?

24 A. Correct.

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1 Q. And that well is located approximately 80 feet
2 from the new location of the tanks?

3 A. Correct.

4 Q. Was that well a well that was known to you prior
5 to the installation of the tanks?

6 A. Correct. Yes.

7 Q. And were actions taken in relation to the IEPA,
8 Illinois Environmental Protection Agency, concerning
9 that well which was less than 200 feet from the tanks?

10 A. Yes.

11 Q. And what happened if you know?

12 A. We were informed -- I was informed by DRW that
13 we needed to -- in order to put the tanks there because
14 of the water well, we needed to get double wall tanks,
15 double wall piping and had to have leak detection
16 systems put in the tanks. I believe the cost went up
17 \$30,000 for that, and I informed him if that's what we
18 need to do, we go ahead and do it, and that's when we
19 proceeded.

20 Q. And additional requirements related only to your
21 well that was 80 feet away from the site of the tanks,
22 correct?

23 A. Correct.

24 Q. Because at that time nobody knew about the well

1 on the affected property which is 140 feet from the
2 tanks, correct?

3 A. Correct.

4 Q. And has DRW taken those steps that were
5 requested by IEPA?

6 A. Yes, they have.

7 Q. And do you know whether or not the EPA issued
8 what is known as a concurrence letter?

9 A. Yes, they did.

10 Q. And that letter, in fact, approved the site of
11 the prescribed underground storage tanks on your
12 property, correct?

13 A. Correct.

14 Q. Once the well on the affected property was
15 noted, what happened?

16 A. We stopped progress. I was informed that I had
17 to get a waiver from the owners of the property next
18 door, and I tried pursuing that avenue. I've talked to
19 Theresa Sclafini and Mr. Sclafini on a handful of
20 occasions, and I've also faxed them, I believe in July
21 1999, the concerns that Mrs. Sclafini had and issues she
22 had raised. I had faxed her response to that. And to
23 this day, I haven't had any response, and we stopped
24 progress on the work.

1 Q. Do you recall when you first talked to either
2 Joe Sclafini or Theresa Sclafini concerning the location
3 of the underground storage tanks in relation to the well
4 on their property?

5 A. Yes, I do.

6 Q. When was that?

7 A. July 19th.

8 Q. 19 --

9 A. 1999.

10 Q. And that was by letter?

11 A. That was by letter.

12 Q. That letter indicates though that you did have
13 oral discussions with them prior to that date; is that
14 correct?

15 A. Correct. Correct.

16 Q. Referring to the letter which is Exhibit 7 in
17 the original petition for water well setback exception,
18 that letter says per our conversation, the following
19 letter is to confirm. So is it safe to assume that
20 prior to July 19th, you did have conversations
21 concerning the waiver with either Joseph Sclafini or
22 Theresa Sclafini?

23 A. Correct.

24 HEARING OFFICER FELTON: Mr. Wolfe, the original

1 petition is dated August 16th, 1999.

2 MR. WOLFE: That's correct and that would be
3 Exhibit 7 which is the July 19th letter just testified
4 to.

5 HEARING OFFICER FELTON: Thank you.

6 BY MR. WOLFE:

7 Q. When the work was stopped, tell me what the
8 condition of the new tanks were in the ground?

9 A. The new tanks are sitting in the ground.
10 They're strapped down with what they call dead man so
11 they don't shift. They are filled with gasoline. Two
12 tanks are filled with gasoline, one is with diesel so
13 they don't move because of the water.

14 They are backfilled to the top with peat
15 gravel. On the site itself there are four, I believe,
16 canopy piers that are dug up. They're probably about
17 eight feet down, and there is probably about three or
18 four truckloads of dirt still sitting on the site
19 because the work has stopped, and it is fenced around.

20 Q. Is the condition of the tanks the same today as
21 it was in July of 1999 when the work was stopped?

22 A. Yes, it is.

23 Q. And you have made no attempt to connect any of

24 the piping to the tanks or do any work related to the

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1 underground storage tanks; is that correct?

2 A. Correct.

3 Q. Is there additional work being done on the
4 property not related to the tanks for the sale of
5 gasoline?

6 A. Yes, it is.

7 Q. Do you want to describe to the hearing officer
8 what work that is?

9 A. The store, it was an old service station. We've
10 renovated the store. We've gutted the whole building
11 and the work is almost complete. Probably another two
12 weeks and we'll have a little minimart set up there.

13 Q. Is the opening of the minimart contingent upon
14 your getting the approval of the Pollution Control Board
15 to continue the installation of the underground storage
16 tanks, piping, dispensers and monitoring equipment?

17 A. Yes, it is.

18 Q. Have you ever had any response at all from the
19 Sclafinis concerning your attempts to obtain a waiver
20 from them?

21 A. No.

22 Q. Mr. Amin, KRRH in purchasing the property, what
23 was the purchase price of the property?

24 A. 210,000.

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1 Q. And that was paid?

2 A. Yes, it was.

3 Q. And your contract with DRW, approximately what
4 is the amount of that contract?

5 A. About 225,000.

6 Q. And the contract for further remediation by
7 Environmental Protection Industries, what is the
8 approximate amount of that contract?

9 A. About 175,000.

10 Q. And in remodeling the store, what were the
11 expenses that have been incurred in relation to that?

12 A. 290,000.

13 Q. And it was your testimony that from the time you
14 purchased the property in March of 1999 to today's date,
15 almost one year later, you have not been able to conduct
16 a business on that site, correct?

17 A. Correct.

18 Q. And you have not earned any moneys doing
19 anything on that site; is that correct?

20 A. Correct.

21 Q. Did you make an estimate as to what you have
22 lost in profits by not being able to operate a business
23 on that site for ten months?

24 A. Yes, I have.

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1 Q. And what's that estimate?

2 A. About 80,000.

3 Q. So for the purchase of the property and the
4 expenses that you've had to incur to open your business,
5 you have spent or contemplate spending almost
6 \$1 million; is that correct?

7 A. Correct.

8 Q. And to pay those sums, did you obtain a loan?

9 A. Yes, I did.

10 Q. And where was that loan obtained?

11 A. Lake in the Hills Bank.

12 Q. And what was the amount of that loan?

13 A. 640,000.

14 Q. And when was that loan taken out?

15 A. June of 1999.

16 Q. And is it safe to say that the bank has not
17 waived any interest due on that loan since that time?

18 A. Correct.

19 Q. And that you have been paying interest on that
20 loan until that time?

21 A. Correct.

22 Q. And that's notwithstanding the fact that your
23 business to date is still not in operation, correct?

24 A. Correct.

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1 Q. Mr. Amin, on August 16th, 1999, you directed my
2 office on your behalf to file a petition before the
3 Pollution Control Board which was accepted by the Board
4 on August 16th, 1999; is that correct?

5 A. Correct.

6 Q. Sitting here today, would any of the matters
7 contained in that petition be different than indicated
8 in the petition?

9 A. No.

10 Q. Referring to certain exhibits in that petition,
11 specifically Exhibit 7, which we already talked about,
12 Exhibit 7 is a true and correct copy of the written
13 notice seeking the waiver that you sent to Studio 21
14 Limited?

15 A. Correct.

16 Q. And that notice indicated a space where the
17 owner of that property would respond?

18 A. Correct.

19 Q. And did you ever receive any response from
20 anybody involved in that property?

21 A. No.

22 Q. And, in fact, subsequent to sending this letter,
23 you had additional conversations with the Sclafinis; is
24 that correct?

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1 A. Correct.

2 Q. Concerning signing the waiver?

3 A. Correct.

4 Q. And they have refused to do that; is that
5 correct?

6 A. Correct.

7 Q. In fact, on or about July 26th, you directed me
8 to fax a copy of a waiver and consent to Theresa
9 Sclafini; is that correct?

10 A. Correct.

11 Q. And did you ever receive any response to that
12 waiver?

13 A. No.

14 Q. And you are familiar with a letter sent to
15 Mr. and Mrs. Sclafini by Mr. Dunaway, who's present
16 before the Board, before the hearing officer today again
17 explaining to the Sclafinis the statutes involved and
18 what was being asked of them; is that correct?

19 A. Correct.

20 Q. And to the best of your knowledge, was there any
21 response -- did you receive any response to that letter?

22 A. No.

23 Q. In response to the petition that you filed, the
24 Illinois Environmental Protection Agency filed a

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1 response and you've reviewed that; is that correct?

2 A. Correct.

3 Q. In relation to that response, did you direct me
4 to supplement your petition by adding additional
5 exhibits to the petition?

6 A. Yes.

7 Q. And those exhibits are contained in this
8 supplement that was received by the Pollution Control
9 Board on or about September 2nd, 1999; is that correct?

10 A. Correct.

11 Q. And you reviewed these additional exhibits?

12 A. Yes, I have.

13 Q. And to the best of your knowledge, these
14 exhibits reflect additional information requested by the
15 Illinois Environmental Protection Agency and the
16 response filed by them, by the Agency, on or about
17 September 2nd, 1999; is that correct?

18 A. Correct.

19 Q. Will you described for the hearing officer
20 exactly what, if you can, underground storage tanks are
21 sought to be installed in the ground at your location
22 and what they replaced?

23 A. We have two 8,000 gallons, one 10,000 gallon, I
24 believe it's called glass steel double wall tanks. What

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1 we did take out of there was one fiberglass single wall
2 tank for the diesel and a steel tank that was relined I
3 believe five years ago. That tank was probably about 23
4 years old.

5 Q. How many tanks were removed?

6 A. Two.

7 Q. And how many tanks are being installed?

8 A. Three.

9 Q. Do you believe that you suffered an economic

10 hardship as a result of your inability to open your
11 business at the property?

12 A. Yes, I have.

13 Q. And how have you suffered an economic hardship?

14 A. I have more expenses and have no income coming
15 from that property. It's costing me more legal costs as
16 well.

17 Q. Thanks.

18 A. It's almost a year. As of February 1st, I have
19 to start making payments on the loan that I have. That
20 amounts to almost \$5500 a month, and I have other very
21 limited income.

22 Q. Do you believe that the installation of the
23 underground storage tanks on the property where situated
24 will have an adverse effect on the environment?

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1 A. No. We actually -- what we removed out of there
2 compared to what we're putting in -- we're putting in
3 three tanks compared to two, but the volume of what
4 we're putting in is less than what we've taken out.

5 Q. Plus the safeguards --

6 A. Correct.

7 Q. -- and the safety features of what is being

8 installed, in your opinion, far exceed what was removed?

9 A. Yes.

10 Q. And do you believe that the features of the
11 tanks and monitoring system that are being installed
12 will be sufficient to ensure that the environment will
13 be kept clean --

14 A. Yes.

15 Q. -- in the site and in the surrounding area?

16 A. Correct.

17 Q. Do you believe that the installation of the
18 underground storage tanks at this site will have any
19 adverse effect or impact upon the water well of the
20 Sclafinis, located approximately 140 feet from the
21 proposed location of the underground storage tanks?

22 A. No.

23 Q. You're still the owner of the property today?

24 A. Correct.

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1 Q. And it's your intention to continue the
2 remediation of the property to seek and receive from the
3 Illinois Environmental Protection Agency a no further
4 remediation or no further action letter?

5 A. Correct.

6 Q. Whichever is appropriate for this site?

7 A. Yes.

8 Q. Do you believe in installing the underground
9 storage tanks at this location on your site that you
10 have taken all safeguards available to you to protect
11 the environment?

12 A. Yes, I have.

13 MR. WOLFE: I have nothing further.

14 HEARING OFFICER FELTON: Does anyone else have
15 any other questions for Mr. Amin?

16 MR. EWART: I have some. Could we just go off
17 the record for a second?

18 (Discussion had off the record.)

19 HEARING OFFICER FELTON: Mr. Ewart, you
20 mentioned you had a few questions for Mr. Amin. Please
21 proceed.

22 CROSS-EXAMINATION

23 by Mr. Ewart

24 Q. Mr. Amin, I show you a copy of a document that

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1 Illinois EPA copied from a diagram on EPI that down at
2 the bottom indicates a 1995 report. Are you familiar
3 with this document?

4 A. I have the copies of this report from EPI, yes.

5 Q. Would you say that this is a true and accurate
6 rendition of the property in question?

7 A. Yes.

8 Q. With regard to this document, which I will
9 identify as Respondent's Exhibit Number 1 for
10 identification --

11 HEARING OFFICER FELTON: Sure.

12 MR. EWART: I'd also like at this point to have
13 it admitted into record if there's no objection.

14 HEARING OFFICER FELTON: Is there any objection
15 to admitting this particular document, Respondent's
16 Exhibit Number 1 into the record?

17 MR. WOLFE: I won't object to the admission of
18 this document for the limited purpose subject to my
19 redirect.

20 MR. EWART: Of course.

21 HEARING OFFICER FELTON: Sure. Actually, I just
22 want to confirm, Mr. Ewart, what exactly you are
23 admitting. Is it just --

24 MR. EWART: I was going to ask the witness to

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1 describe it --

2 HEARING OFFICER FELTON: I'll reserve --

3 MR. EWART: -- because he can certainly describe
4 it better than I.

5 HEARING OFFICER FELTON: Okay. Let's just
6 reserve ruling so we can clarify exactly what this
7 document is.

8 MR. WOLFE: Why it's being offered -- I'd like
9 to know the reason it's being offered.

10 MR. EWART: Just for the facility of describing
11 locations on the property, water wells, the tanks and so
12 forth.

13 MR. WOLFE: That's fine.

14 MR. EWART: To facilitate my cross-questions as
15 well as to assist the Board in identifying locations in
16 reference to things that were --

17 MR. MANKOWSKI: May I make one comment?

18 MR. EWART: Yes.

19 MR. MANKOWSKI: IDOT has, in fact, changed the
20 configuration of the streets around the subject property
21 since '95, and Mr. Amin's property actually does not
22 look like that anymore.

23 MR. WOLFE: We have a drawing that we were going
24 to --

1 MR. MANKOWSKI: There's much more recent --

2 HEARING OFFICER FELTON: Let's go off the record
3 for a second.

4 MR. WOLFE: For the purpose of identifying this
5 property as the way it existed in '95, we don't -- he
6 didn't own it. This is what you're looking for.

7 MR. EWART: That's it exactly.

8 HEARING OFFICER FELTON: So, Mr. Ewart, are you
9 withdrawing your --

10 MR. EWART: I'm withdrawing my Respondent's
11 Exhibit Number 1.

12 MR. WOLFE: For purposes of the
13 cross-examination of Mr. Amin, do you want to mark this
14 Petitioner's 1 and Petitioner's 2?

15 MR. WOLFE: Let me ask the question.

16 MR. EWART: I was going to --

17 REDIRECT-EXAMINATION

18 by Mr. Wolfe

19 Q. Mr. Amin, I'm going to show you what has been
20 marked as Petitioner's Exhibit 1 for identification and
21 ask you what that depicts?

22 A. That's the site where my property exists on.

23 Q. And this diagram shows a one-story concrete
24 building?

1 A. Correct.

2 Q. And a water well?

3 A. Correct.

4 Q. And that water well is the well on your
5 property?

6 A. Correct.

7 Q. And it also shows underground storage tanks?

8 A. Correct.

9 Q. And is that the current location of the
10 underground storage tanks?

11 A. Yes.

12 Q. And this property also shows the water well on
13 the affected property?

14 A. Correct.

15 Q. Which is a water well identified by the fun and
16 entertainment center, Studio 21?

17 A. Correct.

18 Q. And this document also depicts distances between
19 the two wells and the proposed site for the underground
20 storage tanks; is that correct?

21 A. Correct.

22 Q. And it shows the distance between the tanks and
23 the water well on the affected property to be
24 approximately 140 feet?

1 A. Correct.

2 Q. And the well on your property to be
3 approximately 80 feet?

4 A. Correct.

5 Q. And this diagram also depicts a cul-de-sac on
6 Diversey Boulevard and Lake Street which your property
7 fronts; is that correct?

8 A. Correct.

9 Q. And there are additional structures depicted on
10 this property, a Days Inn Motel, Taste of Thailand,
11 which I assume is a restaurant and another family
12 restaurant; is that correct?

13 A. Correct.

14 Q. And does this then truly and accurately depict
15 the property as it exists today?

16 A. Yes, it does.

17 Q. Is there anything different about the property
18 not on this particular document?

19 A. No.

20 MR. WOLFE: I would ask then that subject to
21 cross that this be admitted as Exhibit 1.

22 HEARING OFFICER FELTON: Are there any

23 objections to the admittance of this diagram as
24 Petitioner's Exhibit Number 1?

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1 MR. EWART: I have no objection.

2 HEARING OFFICER FELTON: It is so admitted.
3 Petitioner Exhibit Number 1 is admitted into the record.
4 Mr. Wolfe, do you have a copy for opposing attorney as
5 well as for the Board of that particular exhibit?

6 MR. WOLFE: No, but that is part of our
7 submission. That document is, in fact, part of our
8 petition.

9 HEARING OFFICER FELTON: If the Board can take
10 that copy and you could provide a courtesy copy to the
11 IEPA attorney, that would be --

12 MR. WOLFE: But for the fact that it was blown
13 up, it is right here.

14 HEARING OFFICER FELTON: Is it exactly a blown
15 up of --

16 MR. WOLFE: Of this with some writing on it.

17 HEARING OFFICER FELTON: Which exhibit number
18 from your original petition?

19 MR. WOLFE: It is part of Exhibit Number 6.

20 HEARING OFFICER FELTON: Number 6 of your

21 August --

22 MR. WOLFE: Petition.

23 HEARING OFFICER FELTON: August 16th petition?

24 MR. WOLFE: Correct.

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1 HEARING OFFICER FELTON: Okay. Then if everyone
2 can refer to the Exhibit Number 6 of the August 16th
3 petition. The Board will take this one copy though,
4 Mr. Wolfe, Petitioner's Exhibit Number 1.

5 MR. WOLFE: That's fine.

6 HEARING OFFICER FELTON: Mr. Ewart, if you want
7 to continue or proceed actually with your questioning of
8 this witness.

9 MR. WOLFE: I take that back. Let me provide a
10 copy of that to -- if his purposes are other than what's
11 designated on that, this is a little more extensive.

12 MR. EWART: This is brief questioning and this
13 will suffice.

14 MR. WOLFE: Okay.

15 RECROSS-EXAMINATION

16 by Mr. Ewart

17 Q. I just want for the purposes of this proceeding
18 to identify the well that is on your property if you

19 could just mark an X by it?

20 A. (Witness complies.)

21 Q. And is that not west of the one-story concrete
22 building?

23 A. Correct.

24 Q. Now, would you identify the approximate location

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1 of the underground storage tanks that are currently
2 installed but not in use?

3 A. They're 80 feet. Mark them on here?

4 Q. Yes.

5 A. Approximately about 80 feet. (Witness
6 complies.)

7 Q. And you put three marks there?

8 A. An X and TKS, tanks.

9 Q. Are there three tanks there?

10 A. Correct.

11 Q. Now, in terms of the location of these tanks,
12 was the primary concern at that time to move this as far
13 away from the existing well?

14 A. No, it wasn't.

15 Q. Do you plan to use the well?

16 A. Yes.

17 Q. Is this part of the water for your business and
18 so forth?

19 A. Correct.

20 Q. Had you ever considered locating the tanks to
21 the west or to the left, as far as this document goes,
22 of the portion that is identified as concrete pavement?

23 A. Yes, we did. The plot of survey -- actually, on
24 that drawing, there's two driveways, one on the east

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1 side of the property, one on the west side, and
2 actually, the second driveway doesn't belong to me. It
3 belongs to IDOT, and that goes pretty much straight back
4 all the way to where the water well is.

5 Q. Now, the dotted line on this drawing, is that
6 the boundary of your property?

7 A. Actually, it doesn't picture the same way as the
8 plot of survey. It cuts off at the second driveway.

9 Q. Could you approximately put that line in there?

10 A. Sure. (Witness complies.)

11 MR. EWART: Thank you. I don't have any further
12 questions.

13 THE WITNESS: Okay.

14 MR. WOLFE: I would ask then that, just so we

15 have it on the record and can refer to it, that
16 Petitioner's 1 be admitted into evidence.

17 MR. EWART: I have no objection.

18 HEARING OFFICER FELTON: Can I take a look at
19 it? I just want to make sure it's clear, what has been
20 marked. Mr. Amin, the true boundary line of your
21 property then is this entire dotted line?

22 THE WITNESS: Correct.

23 HEARING OFFICER FELTON: Going across --

24 MR. WOLFE: I'm going to redirect with the

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1 survey --

2 HEARING OFFICER FELTON: Okay.

3 MR. WOLFE: -- so that everybody will see
4 exactly what the boundary lines are.

5 HEARING OFFICER FELTON: And you've clarified
6 though in red along the left side of the document where
7 the boundary line ends on that side.

8 THE WITNESS: Correct. Roughly. Right.

9 HEARING OFFICER FELTON: Roughly, okay. And
10 you've indicated by X's where the tanks are located?

11 THE WITNESS: Correct.

12 HEARING OFFICER FELTON: Are there any

13 objections to the admittance of this document?

14 MR. EWART: No objection.

15 HEARING OFFICER FELTON: Petitioner's Exhibit
16 Number 1 with markings made by Mr. Amin is admitted.

17 Are there any further questions for Mr. Amin
18 on behalf of the IEPA, Mr. Ewart?

19 MR. EWART: No.

20 HEARING OFFICER FELTON: Does anyone else have
21 any questions for Mr. Amin before we proceed with a
22 redirect? Mr. Rao?

23 CROSS-EXAMINATION

24 by Mr. Rao

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1 Q. Basically, this goes to the description of the
2 site here. You had described other structures and two
3 water wells. Can you also describe what other -- the
4 monitor wells and observation wells that show up, can
5 you talk a little bit about them whether they're
6 still --

7 MR. WOLFE: Perhaps the person from EPI might do
8 that, the environmentalist.

9 MR. EWART: I was holding my questions for them
10 as well.

11 MR. RAO: All right.

12 HEARING OFFICER FELTON: All right. We'll
13 reserve those questions for your next witnesses.
14 Anything else, Mr. Rao?

15 MR. RAO: Yes, I have one more.

16 HEARING OFFICER FELTON: Please.

17 BY MR. RAO:

18 Q. Earlier in response to the questions from
19 Mr. Wolfe, you talked about an approval you received
20 from IDOT as to the location of your underground -- the
21 new underground storage tank. Is that approval part of
22 the record here?

23 A. From what IDOT has, we approached -- DRW and I
24 approached IDOT, I believe, March/April of '99, and

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1 their biggest concern was as long as we don't do
2 anything with the driveway and -- as long as we don't do
3 anything with the driveways, it's not going to affect
4 them and with the tanks being one of the major things --
5 it was all verbal.

6 I believe I have -- I could probably get a
7 letter from IDOT. I think I probably have that from the
8 lady I talked to at IDOT.

9 MR. HARMON: They were concerned with the curb
10 cuts that we weren't going to adjust any of the entries
11 on the property.

12 THE WITNESS: Correct.

13 MR. HARMON: And we told them at that time no,
14 and for the convenience of the tanker truck coming in
15 and off of Lake Street, that's why they preferred to
16 have the tanks at that end of the property to make it
17 convenient on how it drops.

18 BY MR. RAO:

19 Q. So there's no written approval or anything in
20 writing?

21 A. No.

22 MR. HARMON: No. We had to submit a drawing to
23 them and they verbally approved it at that time.

24 HEARING OFFICER FELTON: Okay.

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1 MR. RAO: Okay. Thank you.

2 HEARING OFFICER FELTON: Thank you. Anything
3 else for Mr. Amin?

4 MR. WOLFE: Yes.

5 HEARING OFFICER FELTON: Mr. Wolfe, thank you.

6 MR. WOLFE: I would like a couple minutes of

7 redirect. Can you mark this Exhibit 3 please?

8 HEARING OFFICER FELTON: I note you have not
9 moved the Exhibit Number 2 that you marked, right?

10 MR. WOLFE: Not yet.

11 HEARING OFFICER FELTON: Okay.

12 MR. WOLFE: Just skip that for a minute.

13 REDIRECT EXAMINATION

14 by Mr. Wolfe

15 Q. Mr. Amin, I'm going to show you what's been
16 marked as Petitioner's Exhibit 3 for identification
17 which purports to be a plat of survey of your property.
18 Is that what that is?

19 A. Yes, it is.

20 Q. And does that plat of survey also situate the
21 underground storage tanks and piping?

22 A. Yes, it does.

23 Q. As well as dispensers -- the proposed dispensers
24 to be installed on your property?

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1 A. Yes, it does.

2 Q. And that survey also shows an existing building?

3 A. Yes, it does.

4 Q. And as compared to the property description in

5 Exhibit 1, does this survey show the actual property
6 lines?

7 A. Yes, it does.

8 Q. And is that different from what is shown on
9 Exhibit 1?

10 A. Yes, it is.

11 Q. And how is that different?

12 A. The west side of the property isn't really
13 marked on Petitioner's Number 1.

14 Q. Are you saying that the property dimensions are,
15 in fact, smaller --

16 A. Correct.

17 Q. -- than what you might indicate on Exhibit 1?

18 A. Correct.

19 Q. And on Exhibit 1 you attempted by the use of a
20 broken red line to hit the -- what we'll call the west
21 property dimension?

22 A. Correct.

23 Q. And that is actually shown on the survey; is
24 that correct?

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1 A. Yes, it is.

2 Q. And this survey was prepared at your direction

3 by Preferred Survey?

4 A. Yes, it was.

5 Q. And when was that prepared?

6 A. May 13th, 1999.

7 MR. WOLFE: I would ask that Petitioner's
8 Exhibit 3 be admitted into evidence.

9 HEARING OFFICER FELTON: Any objection?

10 MR. EWART: None.

11 HEARING OFFICER FELTON: Petitioner's Exhibit
12 plat of survey -- the Petitioner's Exhibit Number 3,
13 plat of survey is admitted. I just note again, since
14 both of these have been admitted, Exhibits 1 and 3, that
15 you provide a courtesy copy to the Agency's attorney.

16 MR. WOLFE: Yes. I have to get it from --

17 HEARING OFFICER FELTON: I'll direct that in my
18 hearing officer order after this hearing. We can
19 establish a reasonable time frame.

20 MR. WOLFE: That's fine.

21 MR. WOLFE: With respect to the Exhibit 1 that
22 was marked, is there a way for us to copy this here for
23 me and counsel because now it's not exactly in the
24 condition it was when I brought it.

1 HEARING OFFICER FELTON: Right. It's possible
2 that I could try -- we could try and blow this up on our
3 copier, but I'm not sure what our capabilities are here.

4 MR. WOLFE: Even if we could limit it to the
5 middle, that's all we really need.

6 MR. EWART: That will be fine.

7 HEARING OFFICER FELTON: With Petitioner's
8 Exhibit 1 we'll do so. With 3, however, that will need
9 to be provided to the Agency's attorney.

10 MR. WOLFE: Thanks.

11 HEARING OFFICER FELTON: Thank you very much,
12 Mr. Amin.

13 THE WITNESS: Thank you.

14 HEARING OFFICER FELTON: Mr. Wolfe, your next
15 witness.

16 MR. WOLFE: My next witness will be Mr. Harmon
17 from DRW.

18 (Witness previously duly sworn.)

19 DIRECT EXAMINATION

20 by Mr. Wolfe

21 Q. Would you please state your name and spell your
22 last name?

23 A. Doug Harmon, last name H-a-r-m-o-n.

24 Q. And are you employed?

1 A. Yes, I am.

2 Q. Who are you employed by, Doug?

3 A. DRW Services, Inc.

4 Q. How long have you been employed there?

5 A. Five years.

6 Q. And what is the business of DRW?

7 A. We are contractors that install underground
8 storage facilities, tanks for the petroleum industry.

9 Q. What is your position with DRW?

10 A. I'm general sales manager.

11 Q. And what are your duties as general sales
12 manager?

13 A. I virtually meet and greet with the customer and
14 go out to job sites, estimate and form a proposal for
15 doing the upgrades to the sites.

16 Q. And how many jobs would you say that you've
17 acted as general sales manager on an annual basis?

18 A. Probably minimum 30 to 40.

19 Q. And that would be each year for the last five?

20 A. Yes.

21 Q. Are you familiar with the property at 17W532
22 Lake Street, Addison, Illinois?

23 A. Yes, I am.

24 Q. When did you first become familiar with that

1 property?

2 A. On or about November of 1998.

3 Q. How did you become familiar with the property?

4 A. I was contacted by Shilu Amin.

5 Q. And he is the owner of the property?

6 A. Yes, he is.

7 Q. And what did -- when you were contacted by

8 Mr. Amin, was that by phone or in person?

9 A. It was by phone at first, yes.

10 Q. What did he indicate to you that he requested?

11 A. He showed interest in upgrading the property.

12 He wanted me to meet at the property and go over what we

13 could do to come up with a better layout of what's

14 currently there or was there.

15 Q. And did you do that?

16 A. Yes, we did.

17 Q. And when did you do that?

18 A. We initially met in November. Then we met a

19 couple other times to basically go over different

20 designs to meet approvals from both sides to come up

21 with a final drawing so we could submit a bid to him.

22 It probably carried over into January.

23 Q. Of '99?

24 A. Yes.

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1 Q. Did you eventually submit a proposal to
2 Mr. Amin?

3 A. Yes, I did.

4 Q. And do you recall the scope of work in that
5 proposal?

6 A. The scope of my work was to install new storage
7 tanks, new product piping, new dispensers with a POS,
8 system, which is point of sale, new canopy and to do
9 concrete work under the canopy in the fueling areas as
10 requested as well as supply a monitoring system.

11 Q. When you say a monitoring system, what type of
12 monitoring system are you talking about?

13 A. It would be a tank monitoring system for
14 monitoring the underground storage tanks to meet the
15 criteria that the state requests and the EPA requests.
16 And at the time, we also discussed that -- we found out
17 that he did have an on-site water well, and at that
18 time, we understood that to the rules that the state
19 provides, we had to upgrade to double wall tanks, double
20 wall piping, some sensors inside the containment sumps
21 as well as inside the tank itself on and above the

22 normal just monitoring the tank which we approached.

23 Q. Were all these additional items put in a
24 proposal?

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1 A. Yes, they were.

2 Q. And was that proposal eventually accepted by
3 Mr. Amin?

4 A. Yes, it was.

5 Q. Do you recall when that was?

6 A. It was probably around April of '99.

7 Q. That was after he purchased the property?

8 A. Yes.

9 Q. And what did DRW do in relation to this property
10 once the proposal was accepted by Mr. Amin?

11 A. Once it's accepted, we start the permitting
12 process with the State Fire Marshal's office, which is
13 submitting a drawing, filling out the permit as far as
14 what equipment we're going to install and then issue it
15 to the State Fire Marshal's office.

16 Q. And you did all of that?

17 A. Yes, we did.

18 Q. And then what happened?

19 A. Then we go through the waiting period of the

20 State Fire Marshal's office to go through the drawings
21 that we sent down there and the permit that we supplied
22 and wait for their approval.

23 Q. And did you eventually receive approval?

24 A. Yes, we did.

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1 Q. From whom did you receive approval?

2 A. Illinois office of the State Fire Marshal.

3 Q. Were there any problems in receiving the
4 approval from the office of the Fire Marshal?

5 A. No.

6 Q. Was there an issue raised concerning a well that
7 was on the property?

8 A. Yes. They did ask about the well.

9 Q. Can you explain what they asked and what your
10 response was?

11 A. They asked about what -- they looked at the
12 permit, and they kind of double checked to make sure
13 that we were going to do what we submitted as the permit
14 as far as the sump sensors, the double wall piping, the
15 double wall tanks and that we were going to plan on
16 doing what we submitted.

17 Q. On the submissions that you made to the state

18 for approval to install the underground storage tanks,
19 was the water well as identified by Mr. Amin on
20 Exhibit 1 identified to the state?

21 A. Yes, it was.

22 Q. So the state knew at that time that there was a
23 water well situated approximately 80 feet from the
24 proposed site of the underground storage tank pit?

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1 A. That is correct.

2 Q. The new pit?

3 A. That is correct.

4 Q. And you received all of the approvals from the
5 state?

6 A. Yes.

7 Q. And that's including the concurrence letter from
8 the Illinois Environmental Protection Agency waiving the
9 requirement of 200 feet; is that correct?

10 A. We got the concurrence, I think, on the 14th of
11 July.

12 Q. In your submissions to the state, was there
13 anything indicating the water well on the affected
14 property of the Sclafinis?

15 A. No.

16 Q. Why was that?

17 A. When we basically went out to look at the
18 property, right to the immediate east of the property,
19 there is a wooded lot, a vacant lot. As far as the
20 water well, a lot of times we knew there was one on the
21 property itself, so we had to address that one and
22 that's what the state was addressing.

23 In going around and just doing a brief scope,
24 walk around, unless you see the wells sticking out of

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1 the ground, there's no way of knowing it's there.
2 Unbeknownst to us, there was a well that came up in
3 discovery after DuPage County came back and said that
4 there was one approximately 140 foot away. The tanks
5 were already installed at that time. We already had the
6 Fire Marshal out there to install them.

7 Q. At that point when the tanks were installed,
8 what was the condition of the underground storage tanks,
9 and by that, I mean what condition were they in then and
10 what condition are they in now?

11 A. Well, they were brand new from the factory from
12 Modern Welding. When they went into the ground, they
13 were obviously certified by them. The condition of the

14 tanks were brand new.

15 Q. When work was stopped, how did you leave the
16 tanks?

17 A. The tanks were tied down by the concrete dead
18 men. They were ballasted with fuel product, and they
19 were backfilled up to the top of the tanks.

20 Q. What was the backfill?

21 A. Peat gravel.

22 Q. And is that the same condition that these tanks
23 are in today?

24 A. Yes, it is.

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1 Q. Is there any piping going to the tanks?

2 A. No.

3 Q. Are there any dispensers installed?

4 A. No.

5 Q. So basically the tanks are in the ground. There
6 is no piping leading from the tanks and there are no
7 dispensers?

8 A. No.

9 Q. From the time that Mr. Amin contracted with you,
10 to the best of your knowledge, has there been any
11 gasoline dispensed at this site?

12 A. No.

13 Q. Not from these tanks anyway?

14 A. No.

15 Q. As part of the supplement to the petition, which
16 was filed on September 2nd, and in attempt to address
17 some of the issues raised by the Agency, Mr. Amin
18 attached diagrams and schematics for certain of the
19 equipment that was installed or will be installed by
20 DRW; is that correct?

21 A. Correct.

22 Q. And that information was supplied by you; is
23 that right?

24 A. Yes.

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1 Q. What I'd like you to do for the record is go
2 through the features, the safety features, the
3 monitoring features, the fail-safe features of each
4 piece of equipment, the tanks, the piping, the
5 monitoring that you proposed to install on this site,
6 and with respect to each piece of equipment, if you
7 could state whether or not that piece of equipment meets
8 or exceeds EPA standards, that would be appreciated?

9 A. Okay.

10 Q. Okay.

11 A. Starting with the underground storage tanks,
12 what we agreed upon putting in was a glass steel two
13 tank, which is a composite type tank. It's steel on the
14 interior structure and fiberglass on the exterior
15 structure for cathodic protection.

16 The difference between this and other
17 composite tanks is that it does have an interstitch well
18 area, so if there ever was release of product on the
19 inside tank going outward, it could be detected by
20 either a sump sensor or by a monitoring well that's on
21 the tank.

22 These tanks are probably the choice of a lot
23 of people for the simple reason is being steel
24 construction, they're stronger, and they're more

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1 resistant to whatever product we could come up with
2 burning in our cars down the road.

3 The piping, what we're putting is secondary
4 contained flexible piping which a lot of people are
5 choosing to go with now because there is no joints that
6 are buried underground. All terminations of the piping
7 are inside of a sump which can be contained at either

8 the dispenser or at the tank, so the piping system --
9 any kind of product that's being pumped, if there was a
10 leak, it would be into a secondary area which would
11 drain back into the tank into a containment sump.

12 As far as the piping system, there is a
13 safeguard on the piping. There are mechanical leak
14 detectors which have been used for -- ever since they
15 developed pumping systems, underground pumping systems
16 which would automatically, if it detected a pressure
17 drop within the tank, it would go into what's called a
18 slow flow and alert the customer or the owner that there
19 is a problem with the piping.

20 What we have done as well in concordance with
21 the well on the site, we have -- with the tank
22 monitoring system, which I'll go into next, the tank
23 monitoring -- the electronic tank monitoring will do
24 multitudes of things. It will do reconciliation of the

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1 tank. It will tell you what's in the tank. It will
2 tell you water. It will do the most important thing of
3 all. It will do a leak test that meets the point 02.
4 The system that we also put in has the capability of
5 doing a point 01 test if it is so programmed.

6 What this does is monitor the tank on a
7 24-hour basis. If there ever was a leak, once it goes
8 into its leak mode, it would alert the customer that
9 there is a failure to the tank, and he would have to
10 take further action.

11 Also hooked to this tank monitoring system is
12 some sump sensors. There are sump sensors that will be
13 installed in the dispensers as well in the submerged
14 pump sumps. Any product that would be in that sump, no
15 matter what it is, they're hung approximately a short
16 distance off the bottom, it would alert and alarm inside
17 the building onto the monitoring system.

18 There will also be a sensor in the tanks so
19 if there is ever a leak from the inside wall to the
20 exterior of the tank, it will go to the sensor and alert
21 them, and it does indicate what relay is being alerted
22 to. In regards to -- and this particular site has
23 nothing do with the leakage, but there is vapor recovery
24 because of the location that it's in and the quantity

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1 that is produced. We are putting a vapor recovery
2 system in which meets all the criteria as far as that.

3 Q. Were any additional safeguards taken into

4 account in relation to the fact that there was located
5 on the property a well?

6 A. Yes, the sensors. Right now, there is a no
7 clear -- by rights you should be putting in a tank
8 monitoring system, an electronic tank monitoring system
9 when you do any new installation. You do not have to
10 put in sump sensors. You do not have to put in double
11 wall piping. You do not have to put in double wall
12 tanks.

13 In this particular instance, because of the
14 well that was on site, we chose to put in all these
15 safeguards not only because we had to, but we wanted to.
16 And with the tanks there is a thing called a double wall
17 fiberglass tank. Mr. Amin chose to go with the modern
18 welding tank which is structurally stronger.

19 You can go with double wall fiberglass piping
20 but the thing with rigid fiberglass piping is that you
21 have glued joints throughout the system that is
22 underground. With the flexible you do not. It's all --
23 it comes on a reel and goes from one end to another so
24 there's no areas of leakage throughout the piping

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1 system. And the monitoring system that's installed in

2 the system has been produced by EBW and they've been
3 producing it since 1988, and it meets all third-party
4 certification.

5 HEARING OFFICER FELTON: Mr. Harmon, what's EBW?

6 THE WITNESS: EBW is the manufacturer of the
7 autostick junior tank monitoring system.

8 HEARING OFFICER FELTON: Thank you.

9 BY MR. WOLFE:

10 Q. Do you feel that as far as possible in your
11 opinion that all safeguards have been taken with respect
12 to the installation, preparation, proposed preparation
13 and operation of this system on this site in relation to
14 the environment?

15 A. Yes.

16 Q. I'm going to refer you to Petitioner's 3 which
17 is a survey of the property which also depicts the
18 underground storage tanks, the piping system and
19 dispenser; is that correct?

20 A. Uh-huh.

21 Q. And this document, in fact, you provided to me
22 just now?

23 A. Uh-huh.

24 HEARING OFFICER FELTON: Yes?

1 THE WITNESS: Yes. I'm sorry. Okay.

2 BY MR. WOLFE:

3 Q. The underground storage tanks as they're located
4 on the survey --

5 A. Yes.

6 Q. -- is this where they are situated today?

7 A. Yes.

8 Q. In the ground?

9 A. Yes.

10 Q. With respect to the location of the underground
11 storage tanks and the entire system, and by that I mean
12 the piping and the dispensers, can you explain to the
13 hearing officer why this location is the best location
14 on this property for these underground storage tanks?

15 A. Initially, where the tanks were, they had to
16 remove the tanks that were located approximately in this
17 area and in this area.

18 HEARING OFFICER FELTON: Which area is that?

19 BY MR. WOLFE:

20 Q. Do you want to mark it in red the areas where
21 the tanks --

22 A. The initial tanks were located -- one tank was
23 located under here where the island was, and the diesel
24 tank was located approximately in this area.

1 Q. Just for the record, the locations that you've
2 noted are, in fact, closer to the water well on the
3 site; is that correct?

4 A. Oh, yes. Yes.

5 Q. So that the existing tanks, the ones that were
6 removed, are situated -- were situated closer to the
7 water well than the proposed location of the new tanks?

8 A. That is correct.

9 HEARING OFFICER FELTON: And those initial tanks
10 are noted by you, Mr. Harmon, in red?

11 THE WITNESS: Uh-huh.

12 BY MR. WOLFE:

13 Q. On Petitioner's 3. Now, with respect to the
14 location of the underground storage tanks and being the
15 best location, as the location relates to the entire
16 system of dispensing gasoline and the piping, you were
17 going to state that this was the best location?

18 A. Yes. There's a reason for the position where
19 it's at.

20 Q. And that reason is?

21 A. When you put in a canopy, we wanted to put in
22 three dispensers and position the canopy equally within
23 where the curb cuts are on the set property.

24 Q. What's the reason for that?

1 A. Basis traffic flow coming in. You do not want
2 to put dispensers in harms way or inconveniently for the
3 customer to come in with his automobile. We want to
4 position it to where you could easily visibly see from
5 the building, from the cash register out to the
6 dispenser area. We also want to make sure for the tanks
7 the positioning of the tanks so when our underground
8 tanker trucks were to come onto the lot, he could drop
9 his product and leave the product.

10 Q. There are safety concerns?

11 A. There's safety concerns, yes. Underground
12 storage tanks, they are underground. They are out of
13 the way, but, A, number one, you don't want to put it
14 underneath a canopy for the simple reason if you ever
15 had a problem or had to work on the tank, you'd have to
16 take the canopy down.

17 So we always try to keep them away from the
18 canopy as well. And we also want to keep it to the
19 farthest corner as possible so it's out of the way
20 because people drive on top of the tanks, and it's part
21 of the parking lot.

22 Q. During Mr. Amin's testimony, he indicated that

23 there was a meeting with Illinois Department of
24 Transportation where they indicated some concern in

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1 relation to the location of the tanks. Were you present
2 at that meeting?

3 A. Yes, I was.

4 Q. And where did that occur?

5 A. It occurred at their office I think off of the
6 Tri-State, 290. I don't know the exact address.

7 Q. At the offices of IDOT?

8 A. IDOT, yes.

9 Q. And do you recall who was there for IDOT, who
10 represented them?

11 A. I don't recall the lady's name. It was one
12 woman that we met with. I presented at that time a
13 sketched drawing, not this exact drawing, but a sketched
14 drawing of where we were going to locate the tanks with
15 the dimensions from the property lines that we were
16 going to place the tanks as well as the islands.

17 Q. And did IDOT indicate any problems with where
18 you were situating the tanks?

19 A. None whatsoever.

20 Q. And the document that you presented to IDOT

21 situated the tanks in the same location as indicated on
22 Petitioner's 3?

23 A. That is correct.

24 Q. In your capacity as general sales manager for

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1 DRW, in your opinion, have you taken all safeguards in
2 relation to the installation of the underground storage
3 tanks, piping dispensers and monitoring system vis-a-vis
4 environmental impact of the installation of those items
5 on this property?

6 A. Yes.

7 Q. And do you believe that there are sufficient
8 safeguards with respect to the monitoring to protect
9 against the possibility of sudden contamination or
10 chronic contamination of the property caused by the
11 underground storage tanks, piping system or dispensers?

12 A. Yes.

13 Q. The work that was required in relation to the
14 existence of the water well on the property was that an
15 additional expense to Mr. Amin?

16 A. Yes, it was.

17 Q. And that would have been over and above what
18 would have been installed had the water well not been

19 there; is that correct?

20 A. That is correct.

21 Q. Now, Doug, I'm going to show you what was
22 attached to the supplement, which is a DRW proposal
23 bearing your signature and that would be part of S1, the
24 affidavit of Mr. Amin and that shows a quote of \$61,000.

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1 Mr. Amin testified that the amount of the contract with
2 DRW was closer to 225. Has this been changed?

3 A. No. What this quote basically says is that he
4 asked if we were to position the tanks to the other end
5 of the property at one time and what he asked me to do
6 is submit him a quote of what that would cost to do with
7 the current conditions.

8 Q. So this is not the proposal --

9 A. No, that is not to the proposal.

10 Q. -- that was, in fact, used to do the work that
11 you did or will do on the property?

12 A. No.

13 Q. And that quote in that proposal is closer to the
14 225,000 --

15 A. That is correct.

16 Q. -- that was testified to by Mr. Amin?

17 A. That is correct.

18 Q. As long as I have you here, Exhibit S2, do you
19 want to explain briefly what that is?

20 HEARING OFFICER FELTON: Mr. Wolfe, I just note
21 for the record that you're referring S2 --

22 MR. WOLFE: S2 of the supplement.

23 HEARING OFFICER FELTON: -- of the supplement
24 dated September 2nd, 1999.

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1 MR. WOLFE: Correct.

2 BY THE WITNESS:

3 A. This drawing here is what we submitted to the
4 State Fire Marshal's office showing the positioning of
5 the tanks, islands and where the product piping was
6 going to be as well as the vents.

7 The State Fire Marshal requires that we do
8 this to show all setbacks, building positions. The only
9 difference with this drawing, we did put on the original
10 drawing where the well is positioned in accordance to
11 where the tanks are, the water well.

12 BY MR. WOLFE:

13 Q. Mr. Harmon, you're now familiar with the fact
14 that there's a water well approximately 140 feet from

15 the proposed area of the underground storage tanks?

16 A. At this time I am, but at that time, no.

17 Q. I understand. And that is the well on the
18 affected property of the Sclafinis?

19 A. That is correct.

20 Q. In your opinion, has DRW adequately safeguarded
21 the well that you now know to be on the Sclafini's
22 property based upon what you testified to today in
23 relation to the safeguards in this system?

24 A. Yes.

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1 Q. And how do you derive that opinion?

2 A. Because we took into consideration the well that
3 was on Mr. Amin's property, which is 80 feet away. All
4 these safeguards that we put in are for that particular
5 reason itself. We have upgraded, and there's really not
6 a whole lot more we can do to put any more horns, bells
7 or whistles on this process.

8 Q. Do you believe that the system as proposed by
9 DRW for this site will safeguard the well that you now
10 know to be on the Sclafini's property?

11 A. Yes.

12 MR. WOLFE: I have nothing further.

13 HEARING OFFICER FELTON: Okay. Are there any
14 other questions for Mr. Harmon, Mr. Ewart?

15 MR. EWART: I just have one or two.

16 CROSS-EXAMINATION

17 by Mr. Ewart

18 Q. With regard to the fiberglass steel underground
19 tank, what is the projected life span of a tank like
20 that?

21 A. Tank manufacturers now through STIP 3, which is
22 a governing body that tests tanks and certifies them,
23 all tanks are warranted for 30 years after the date of
24 installation. Whether that says that tank is going to

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1 last 30 years or 60 years, that I couldn't tell you.

2 When we install the tanks, we have to do it
3 to a certain construction criteria basically bedded with
4 peat gravel, surrounded with peat gravel so there's no
5 obstructions as far as cutting into the tank.

6 Q. What about the flexible piping, is there any
7 projected life span on that?

8 A. As far as the warranty period on that, no,
9 nobody has ever come out and said the projected life
10 span of it. It has been tested by a third party.

11 Before any kind of petroleum product can run through an
12 underground system, you have to have certification from
13 the state which is the Illinois office of the State Fire
14 Marshal as well as third party testing which a lot of
15 the time is UL.

16 MR. EWART: I have no further questions.

17 HEARING OFFICER FELTON: Are there any other
18 questions for Mr. Harmon?

19 MR. RAO: I have a couple of questions.

20 HEARING OFFICER FELTON: Mr. Rao, please.

21 CROSS-EXAMINATION

22 by Mr. Rao

23 Q. You talked a little bit about how you go about
24 looking for wells within a 200 feet setback distance.

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1 A. Uh-huh.

2 Q. Is there like a general procedure that you
3 follow to identify if there are any wells within the
4 setback before you get to the point where you install
5 the well?

6 A. In this particular case, the surrounding
7 properties -- most cases I know of there's a well on the
8 property and there's a neighbor right next to it, you

9 would be safe to assume that if they have a well, the
10 other properties would.

11 By looking into a person's yard, if you can,
12 you can see the well head coming up. Then we would take
13 that into consideration. In this particular instance,
14 there's virtually a turnaround area for buses. There's
15 a hotel in the back, which around that area there is no
16 indication of a well.

17 On the property that the well is 140 foot
18 away, there's a manhole cover which looks like a regular
19 street manhole cover. There's two or three of them on
20 the property. What indicates a well there, you couldn't
21 see. I mean, there was no indication saying that that
22 was a water well, that there was one there.

23 Q. Do you -- were you aware of this information
24 that the Department of Public Health may have this kind

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1 of information where you can just call them up and ask
2 them if a well is registered in the area? Is that
3 something that --

4 A. Every community is different. We have to submit
5 a permit to do work in any local, but the governing body
6 that we go by is the office of the State Fire Marshal.

7 Normally, as a courtesy if we're doing any construction
8 as far as a building, such as the canopy, then we do
9 have to get a building permit, which is on a local
10 basis.

11 A lot of local communities don't even come
12 out because they know that the office of the State Fire
13 Marshal will have a representative there. They know
14 that we have to meet all their criteria. As far as
15 knowing where all the wells are, no, we don't, you know,
16 go in. Some communities don't even have this
17 information available.

18 Q. And this information was not available in the
19 EPI site classification --

20 A. No.

21 Q. -- report because that's, I think, required
22 under the rules that they look for wells within 200 feet
23 setback when they classify the sites?

24 A. I was not aware of the well at that time. The

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1 only well that I was aware of was the one that's on
2 Mr. Amin's property.

3 MR. RAO: Okay. Thank you.

4 HEARING OFFICER FELTON: Are there any other

5 questions for Mr. Harmon?

6 MR. WOLFE: I'd like to follow-up with a couple
7 if you don't mind.

8 HEARING OFFICER FELTON: Seeing that there's
9 none on cross-examination for Mr. Harmon, we'll proceed
10 now with redirect.

11 REDIRECT EXAMINATION

12 by Mr. Wolfe

13 Q. Are you aware, Doug, of any state records
14 available that would identify every water well in the
15 state of Illinois?

16 A. Not to my knowledge, no.

17 Q. To the best of your knowledge, prior to the
18 DuPage County Health Department identifying this water
19 well, did the state of Illinois indicate at any time
20 that there was a well on this site?

21 A. No.

22 Q. Did any agency that you sought approval from
23 indicate that there was a well on this site?

24 A. No.

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1 MR. WOLFE: I have nothing further.

2 HEARING OFFICER FELTON: Thank you very much,

3 Mr. Harmon.

4 Mr. Wolfe, your final witness.

5 MR. WOLFE: I will now call Mr. Mankowski who
6 I'm sure is contemplating one or two questions already
7 he's just heard, so I hope you have your thinking cap
8 on.

9 (Witness previously duly sworn.)

10 DIRECT EXAMINATION

11 by Mr. Wolfe

12 Q. Would you please state your name and give us
13 your profession?

14 A. Robert Mankowski, M-a-n-k-o-w-s-k-i. I'm the
15 vice president of Environmental Protection Industries.

16 Q. And what is Environmental Protection Industries?

17 A. EPI, which we'll refer to the company, is a full
18 service environmental consulting firm.

19 Q. And how long have you been with EPI?

20 A. Since 1995.

21 Q. Were you involved in the environmental industry
22 prior to 1995?

23 A. Yes, I was.

24 Q. How was that?

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1 A. I started in the environmental consulting field
2 in 1988 following a return from working overseas.

3 Q. And from 1988 through the present, you've been
4 in the industry?

5 A. Yes, I have.

6 Q. What are your duties as the vice president of
7 EPI?

8 A. I oversee all the technical services, provide
9 proposals, marketing and general administrative.

10 Q. When you talk about technical services,
11 Mr. Mankowski, can you describe some of those services?

12 A. Sure. There would be phase I and phase II
13 environmental site assessments, phase III remediation
14 leaking underground storage tanks, property condition
15 assessments, brown fields restoration and other general
16 consulting regarding environmental compliance.

17 Q. Are you familiar with the KRKH property in
18 Addison, Illinois at 17 West 532 Lake Street?

19 A. Yes, I am.

20 Q. When did you first become familiar with that
21 property?

22 A. The first time I became familiar with that was
23 when a release of gasoline was identified at that
24 property and called into the Illinois Emergency

1 Management Agency.

2 Q. When was that?

3 A. That was in 1995. The exact date I don't
4 recall.

5 Q. That was approximately the same time you started
6 working for EPI?

7 A. Yeah, shortly after I started working.

8 Q. What was your involvement with the project --
9 and I'll call the environmental work on the property as
10 the project. What was your involvement with the project
11 at that time?

12 A. I did not have any involvement at that time. I
13 became more involved with the project when I was
14 elevated to a vice presidential position which in
15 reviewing some of the reports that went out following
16 the initial reporting in '95. I became vice president
17 of EPI in 1997 when we worked with the owner at that
18 time, Kean Oil in preparing proposals for site
19 classification.

20 Q. Are you aware of the fact that in or about
21 November of 1995 a 45-day report was prepared by EPI in
22 relation to this property?

23 A. Yes, I am.

24 Q. Have you reviewed that report?

1 A. I have seen it, yes.

2 Q. Are you familiar with the contents of that
3 report?

4 A. I am fairly familiar with the contents.

5 Q. Generally speaking, with respect to the contents
6 of that report, what was noted in that 45-day report
7 concerning the environmental condition of this property?

8 A. A release was identified following testing and
9 closure of the station of, I believe, unleaded premium
10 gas that had migrated away from the station through
11 natural and man-made migration pathways to Salt Creek
12 approximately 1500 feet west of the property.

13 Q. When you say natural migration pathways and
14 unnatural, would you explain what those are?

15 A. Sure. There is a sand seam, a saturated sand
16 seam in the subsurface that has groundwater in it. The
17 release from the tanks migrated through this to the
18 sewers on Lake Street and following the backfill around
19 the sewers on Lake Street and the sewers themselves, it
20 migrated directly to Salt Creek to the west.

21 Q. Did you have at that time continued involvement
22 with the remediation or reporting for this property?

23 A. Yes.

24 Q. And what was that?

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1 A. Environmental Protection Industries was employed
2 to conduct emergency response to install trenches and
3 recovery wells to stop the release, recover the release,
4 vent the sewer systems and to the best of our abilities,
5 contain the release in the creek with sorbent booms.
6 Following removal of over 100,000 gallons of water
7 approximately 3,000 gallons or more of gasoline product,
8 wells and the trenches were continually pumped and
9 monitored until all free product was, in fact, removed
10 from the sewer system.

11 Q. And when approximately was that accomplished?

12 A. I believe that was completed in '95.

13 Q. So this was under the prior order?

14 A. Yes.

15 Q. And then what involvement did EPI have with the
16 property after that?

17 A. It was continually monitored. Free product was
18 removed from the property itself through ourselves and
19 the property owner through the wells that were left on
20 site.

21 Q. At some point in time, was there a slowdown of

22 activities --

23 A. Yes, there was.

24 Q. -- and remediation and environmental work on the

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1 property?

2 A. Yes, there was.

3 Q. When was that?

4 A. Approximately 1996 the free product was --
5 removal operations were ceased, and the owner then
6 contemplated site classification, but due to some of the
7 reimbursement problems at the IEPA, he actually put his
8 project on hold.

9 Q. And that would have been when approximately?

10 A. About 1996.

11 Q. When you say on hold, that indicates that there
12 were no further remediation efforts done at that time?

13 A. Well, let me back up one second. He did, in
14 fact, shut down the tanks, relined them and fix the
15 piping back in '95.

16 Q. And reopen for business?

17 A. Yes, he did. Exact dates, I don't know.

18 Q. Sometime later did you have contact with
19 Mr. Amin?

20 A. Yes.

21 Q. And when was that?

22 A. The owner of the property Kean Oil indicated to
23 us that there was a potential sale, at which case he
24 wanted proposals or plans and whatnot that had been

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1 generated to be submitted to a potential buyer.

2 Q. And did you, in fact, do that?

3 A. Yes, we did.

4 Q. What type of work plans did you submit to
5 Mr. Amin?

6 A. The site classification work plan, which I
7 believe at that time had been approved by the state, and
8 estimates for removing the tanks and estimating amounts
9 of contaminated soil.

10 Q. Now, the site classification work plan is
11 different from the May 14th site classification
12 completion report, a portion of which has been submitted
13 to the Board in the supplement dated September 2nd,
14 1999; is that correct?

15 A. Yes, it is.

16 Q. What is the site classification completion
17 report?

18 A. That is the report that was submitted following
19 acceptance of the work plan by the IEPA and contracted
20 between Mr. Amin and ourselves to complete or start the
21 completion of the reporting process to obtain a no
22 further remediation letter from the IEPA regarding the
23 release.

24 Q. And that contract was entered into with Mr. Amin

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1 after he purchased the property?

2 A. Yes.

3 Q. In or about March of 1999?

4 A. Yes, shortly after March 1999.

5 Q. I may as well ask the question now. With
6 respect to the site classification completion report,
7 did you note the well on the affected property of the
8 Sclafinis which is approximately 140 feet from the
9 location of the proposed tanks?

10 A. No.

11 Q. And what is the reason for that?

12 A. Well, under the regulations when you're
13 classifying a site, the professional engineer can stop
14 site classification activities at or around the time he
15 identifies that it's high priority and the reasons for

16 high priority, one of which is the on-site well, the
17 other being soil and groundwater contamination off of
18 the property which, in fact, was documented all the way
19 back to 1995.

20 Q. This site is a high priority site?

21 A. Yes, it is.

22 Q. And the reason again that's a high priority site
23 is what, the existence of the well?

24 A. The identification of gasoline or petroleum or

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1 vapors that through natural or man-made migration
2 pathways may potentially impact human health or the
3 environment.

4 Q. The source of the contamination originally in
5 1995 was what?

6 A. That was the -- actually, one of the two tanks
7 on the property at that time, one of which was actually
8 a compartmental tank of 20,000 gallons in size, 12 and
9 eight I believe are the two compartments.

10 Q. And the tanks that were previously on the
11 property, including the one that caused the
12 environmental problem, have been removed?

13 A. They have now been removed, yes. As part of the

14 proposal that was prepared for Mr. Amin, we prepared
15 cost estimates for the purchase, and there was a couple
16 different ones, not only to close the site, but also to
17 remove the old tanks for upgrading the property with new
18 tanks.

19 Q. So since Mr. Amin has purchased the property,
20 the source of the prior contamination that was detected
21 in 1995 has been proved?

22 A. Yes, it has.

23 Q. And that source was the underground storage
24 tanks then existing on the property?

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1 A. Yes, sir.

2 Q. And in the place of those tanks, Mr. Amin then
3 contemplated installing the tanks as identified in the
4 location on Petitioner's Exhibit 3; is that correct?

5 A. Yes.

6 Q. And at the time that Mr. Amin was working with
7 DRW for the installation of the tanks, the piping system
8 and the monitoring system, was he also working with EPI?

9 A. Yes.

10 Q. And what capacity was he working with EPI?

11 A. Well, like I said before, we were completing the

12 site classification activities for him in order to get
13 the site classified with the IEPA prior to submitting a
14 corrective action plan for getting the NFR or cleaning
15 up the site and addressing residual contamination and
16 the source of the contamination.

17 Q. What was EPI doing specifically in relation to
18 preparing the site classification completion report?

19 A. Well, during IDOT's work following the release
20 in '95 to I believe widen Lake Street, install new
21 sewers and put in this cul-de-sac which is on Exhibit --

22 Q. 3?

23 A. -- 3, we wanted to replace some of the wells
24 which you might see on some of the other drawings from

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1 the 45-day report in order to complete the mapping of
2 the vertical, horizontal and groundwater contamination
3 at the site and adjacent properties.

4 Q. Did EPI do anything in relation to testing the
5 water well on Mr. Amin's site?

6 A. Yes.

7 Q. What did you do?

8 A. We sampled the well water from the tap in the
9 station.

10 Q. And when was that done approximately?

11 A. I believe that was done recently when the
12 adjacent or nearby property was also sampled.

13 Q. And the water sampled from Mr. Amin's property,
14 was that tested?

15 A. Yes.

16 Q. And where did you send that for analysis, do you
17 recall?

18 A. I believe that went to American Environmental.

19 Q. And did you receive the results of those tests?

20 A. Yes.

21 Q. And what were the results?

22 A. Nondetect for gasoline constituents.

23 Q. What does that mean in English?

24 A. It means no contamination was found in the well.

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1 Q. Did you also have an occasion to test the well
2 located on the affected property?

3 A. Yes, we did.

4 Q. And when did you do that?

5 A. The exact date, I'm not sure of, but I believe
6 we supplied that to you.

7 Q. Was it after Mr. Amin purchased the property?

8 A. Yes, it was.

9 Q. Sometime in the summer of 1999?

10 A. Yes, it was.

11 Q. What did you do in relation to testing the well
12 on the Sclafini's property?

13 A. Well, when this whole problem occurred and that
14 well was, in fact, identified and in negotiations and
15 good faith, Mr. Amin contacted the neighbors at
16 Studio 21 and obtained our approval to go on their
17 property and sample their well. We sampled the well,
18 and no contamination was identified in their well
19 either.

20 Q. So the levels -- BTEX levels and PNA levels with
21 respect to the well on the Sclafini's property did not
22 meet or exceed IEPA guidelines; is this correct?

23 A. That's right. There is no detects.

24 Q. And do you have any reason to indicate today

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1 that the results of those tests would be different if
2 conducted today?

3 A. No.

4 Q. Now, you were familiar in 1995 with the extent
5 of contamination on the KRKH site, were you not?

6 A. Yes.

7 Q. Which is --

8 A. In '95 very generally, yes.

9 Q. Can you explain to the hearing officer what the
10 extent of that contamination was both with respect to
11 soil contamination and groundwater contamination?

12 A. In '95 really the effected media there was the
13 soil directly below the site and the groundwater in a
14 saturated sand seam below the property. The
15 contamination migrated into and around the sewers
16 located on Lake Street south and then flowing, I guess
17 this would be, northwest to Salt Creek.

18 The amount of contamination can never be
19 absolutely quantified. Efforts were made to contain all
20 and any contamination identified at that time.

21 Q. Was there off-site contamination at that time?

22 A. Yes.

23 Q. And where was the off-site contamination?

24 A. It followed the sewer system approximately 1500

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1 feet to the west directly into Salt Creek. Let me
2 elaborate. The release from the tanks on the property
3 will release onto the property into any area of least

4 resistance. It's going to move where it's able to move.

5 The sewer system on Lake Street was the
6 easiest pathway for the gasoline to take during the
7 release. Following the closure of the tanks, removal of
8 all product, the release stopped to this pathway in
9 which case we continued to remove groundwater and
10 gasoline until it was identified that there was no
11 longer gasoline showing up in the trenches along Lake
12 Street.

13 Q. Is there a difference between the environmental
14 condition of the property today as compared to 1995?

15 A. Yes, natural degradation.

16 Q. What is that difference?

17 A. The levels of contamination and the free product
18 identified in '95 no longer exist. What is considered
19 to be residual gasoline contamination exists in the site
20 soils and to a limited extent in the groundwater below
21 the site and below Lake Street.

22 Q. Has the condition of the property improved since
23 1995?

24 A. Yes, it has.

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1 Q. Have you reviewed the proposals of DRW

2 concerning the installation of the underground storage
3 tanks, piping and monitoring equipment and the specific
4 equipment to be installed?

5 A. Very peripherally.

6 Q. And do you have an opinion concerning whether or
7 not that equipment will sufficiently protect the
8 environment in relation to the dispensing of gasoline
9 from this site?

10 A. Yes.

11 Q. And what is that opinion?

12 A. This is a state-of-the-art system which has been
13 designed to protect to the best abilities of the
14 equipment in the industry today a water well on a
15 property as a potable drinking source.

16 Q. And the equipment to be installed takes into
17 account in your opinion the fact that there will be a
18 water well located approximately 80 feet from the
19 underground storage tanks?

20 A. Yes.

21 Q. And you do not believe that that water well will
22 be adversely affected by the installation of this
23 system?

24 A. No.

1 Q. Let me show you Petitioner's Exhibit 2, which,
2 in part, is part of the record. Actually, let's go back
3 to the petition filed August 16th. This would be part
4 of Petitioner's Exhibit 6, and it would be the first
5 site drawing identified as part of that exhibit.

6 Mr. Mankowski, I'm going to ask you to
7 identify what we've previously marked as Petitioner's
8 Exhibit 2 and ask you if you prepared this document?

9 A. Yes. EPI has prepared this document.

10 Q. What does this document show?

11 A. This document shows a shallow groundwater flow
12 beneath the subject property.

13 Q. There are some that appear to be parallel lines
14 with numbers on this document. Can you identify what
15 those are?

16 A. Those are lines that identify the groundwater
17 depth below the surface from a point where the wells are
18 used to collect groundwater elevation data and then a
19 line perpendicular to those lines or an arrow is used to
20 identify the actual flow direction. The lines on one
21 end being the highest elevations, the others being the
22 lower elevations.

23 Q. And you've also identified by an arrow what you
24 consider to be the groundwater flow; is that correct?

1 A. Yes.

2 Q. Is that arrow consistent with your prior
3 testimony that when there was a release at this station,
4 the contamination flowed toward Salt Creek?

5 A. Yes.

6 Q. And this groundwater flow would be consistent
7 with that; is that correct?

8 A. Yes.

9 Q. And it shows that if the approximate location of
10 the new tanks were situated as identified in
11 Petitioner's Exhibit 3, which is on the northeast
12 portion of the property, that the groundwater would flow
13 from that area in a direction towards Lake Street; is
14 that correct?

15 A. Yes.

16 Q. Would it flow in any other direction?

17 A. No.

18 Q. So that if there were a water well as depicted
19 on Petitioner's Exhibit 1 to the east of the subject
20 property, which is the water well of the Sclafini's on
21 the affected property, if there were a chance that there
22 would be a release of product in either the underground
23 storage tanks, the piping or dispensing system as
24 indicated in Petitioner's 3, is it your testimony that

1 that would have no effect on the water well located on
2 the Sclafini's property?

3 A. Yes.

4 Q. And the reason for that opinion is what?

5 A. Twofold, one, during the 1995 release, had there
6 been a problem and groundwater flow opposite of what has
7 been mapped, that well most likely would have been
8 identified at that time and impacts of that well would
9 have been noted. Number two --

10 Q. And were there any impacts identified at that
11 time with respect to that well?

12 A. Not to my knowledge.

13 Q. And number two?

14 A. Number two, based on the location, the
15 preferential pathway again would be along man-made
16 migration pathways which would prevent release going in
17 what is known as an upgradient direction.

18 Q. Is there a law of physics that would somehow
19 prevent water to flow upgradient?

20 A. To a certain extent, yes. It follows the path
21 of least resistance and gravity.

22 Q. And, in fact, Mr. Mankowski, the water well

23 situated on the subject site approximately 80 feet from
24 the pit, according to where you have the groundwater

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1 flow going, would also not be affected by a release in
2 this system; is that correct?

3 A. It is unlikely; however, due to construction
4 activities on the subject property, it would be
5 difficult to tell exact groundwater flow right around
6 the tanks and whatnot and piers and whatnot, but it's
7 unlikely.

8 Q. More of a chance perhaps than even contamination
9 to the Sclafini's well, correct?

10 A. Oh, yes.

11 Q. Which is situated approximately 60 feet further
12 and in a direction, as you've testified, entirely
13 opposite of the groundwater flow, correct?

14 A. Yes.

15 Q. Is the groundwater flow today the same as it was
16 when Petitioner's Exhibit 2 was prepared?

17 A. Exhibit 2 being?

18 Q. This. Is that the same groundwater flow as it
19 exists today?

20 A. Yes.

21 Q. Can you describe to the hearing officer what the
22 environmental condition in your opinion of the
23 property -- of the subject property is today?

24 A. The environmental condition?

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1 Q. Uh-huh, if you know.

2 A. Well, relative to 1995, it's in much, much
3 better condition. The source of release has been
4 removed. Contaminated soil has been removed. The
5 modeling and the corrective action plan, which is
6 currently being generated, will demonstrate that there
7 is little or no exposure to the contamination residual
8 contamination that exists at the site today to human
9 health or the environment.

10 Q. And you've already testified in your opinion the
11 safeguards prescribed by the system to be installed by
12 DRW also would protect the environment; is that correct?

13 A. Yes, it would.

14 Q. Is there anything in your opinion concerning the
15 installation of the underground storage tanks where
16 situated on the subject site that that location would
17 adversely affect the water well situated on the affected
18 property?

19 A. No.

20 Q. Is it your understanding that Mr. Amin will, in
21 fact, and you have contracted with him to conclude the
22 process of remediation in an attempt to receive either a
23 no further action or no further remediation letter from
24 the IEPA?

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1 A. Yes.

2 Q. And that is what EPI is intending to do; is that
3 correct?

4 A. Yes.

5 MR. WOLFE: I have nothing further.

6 HEARING OFFICER FELTON: Mr. Wolfe, are you
7 moving the admittance of Petitioner's Exhibit Number 2?

8 MR. WOLFE: Yes. I would ask that
9 Petitioner's 2 be admitted into evidence being the
10 document identified by Mr. Mankowski being prepared by
11 him.

12 HEARING OFFICER FELTON: Is there any objection
13 to the admittance of that exhibit?

14 MR. EWART: No objection.

15 HEARING OFFICER FELTON: Petitioner's Exhibit
16 Number 2 is admitted into evidence as it appears to be a

17 blown up copy of Petitioner's original Exhibit Number 6.
18 We'll see if we can't make a copy of that for us. I
19 just actually have one question for Mr. Mankowski before
20 we proceed.

21 THE WITNESS: Yes.

22 HEARING OFFICER FELTON: Is the Sclafini's water
23 well identified on that exhibit, and if so, how is it
24 identified?

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1 THE WITNESS: No. The Sclafini's water well is
2 identified on the exhibit with the soil contamination
3 plume which is --

4 BY MR. WOLFE:

5 Q. Exhibit 1, but I will, for purposes of
6 clarification, since the hearing officer raised that
7 question -- Mr. Mankowski, I'm going to ask you, if you
8 will, to identify the groundwater flow on Petitioner's 1
9 using the model of Petitioner's 2 if you could do that
10 with the red pen which I will give you?

11 A. And this is an estimate from Exhibit 2.

12 MR. WOLFE: I hope that assists the hearing
13 officer in identifying.

14 HEARING OFFICER FELTON: Yes. Thank you.

15 Are there any questions for Mr. Mankowski,
16 Mr. Ewart?

17 MR. EWART: Could we go off the record for a
18 second?

19 HEARING OFFICER FELTON: Yeah, just for a
20 second.

21 (Discussion had off the record.)

22 HEARING OFFICER FELTON: Mr. Ewart, whenever
23 you're ready.

24 CROSS-EXAMINATION

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1 by Mr. Ewart

2 Q. Mr. Mankowski, I show you a document that was
3 taken out of EPI site classification complete report.

4 A. Yes.

5 Q. Are you familiar with that document?

6 A. Yes.

7 Q. I would like to identify that as Respondent's
8 Exhibit Number 2?

9 HEARING OFFICER FELTON: Is there --

10 MR. EWART: There's a 1, but it was withdrawn.

11 HEARING OFFICER FELTON: We'll identify it as
12 actually Respondent IEPA Exhibit Number 2 just in case

13 we have for some reason any other exhibits from any
14 other respondent.

15 MR. EWART: Exactly.

16 HEARING OFFICER FELTON: Thank you. Okay.

17 BY MR. EWART:

18 Q. Are you familiar with this document?

19 A. Yes, I am.

20 Q. What is this document?

21 A. This document is a groundwater sample testing
22 table which identifies gasoline contamination testing
23 for the wells at the property and also off of the
24 property.

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1 Q. Were you involved in the collection or the
2 transportation of the sampling to the laboratory?

3 A. Me personally?

4 Q. Yes.

5 A. No, sir.

6 Q. Do you know who was?

7 A. That would have been one of our engineers. The
8 exact person, I'm not sure. The information would be
9 located in the report on the chain of custody form.

10 Q. I understand. Would you know what laboratory

11 was used to --

12 A. Yes.

13 Q. -- conduct the analysis?

14 A. I believe it was AEA Laboratory.

15 Q. Do you know the date, the sampling date for
16 these?

17 A. No, but that would be on the chain of custody as
18 well.

19 Q. I show you up in the left-hand corner which is
20 circled.

21 A. Okay.

22 Q. Do you think that would -- after looking at that
23 date, I reiterate the question, would you know what the
24 sampling date on this is?

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1 A. The sample that we take that is on the table
2 may, in fact, be the date that our guys went out and
3 sampled the wells, yes.

4 HEARING OFFICER FELTON: What date is that, if
5 you can read it?

6 THE WITNESS: That date is listed as 4/20/99.

7 HEARING OFFICER FELTON: Thank you.

8 BY MR. EWART:

9 Q. Now, Mr. Mankowski, this shows four analytes
10 Benzene, Toluene, Ethylbenzene and total Xylenes.
11 A. Yes.
12 Q. Now, in columns to the right of those analytes,
13 there are OW3 -- OW1, OW2, OW3, monitoring well number 3
14 and a duplicate of OW2?
15 A. Yes.
16 Q. Are you familiar with those designations?
17 A. Yes, I am.
18 Q. Would they exist on any prior exhibits that are
19 in this record?
20 A. Yes.
21 Q. Let's start with OW Number 1. What is OW
22 Number 1 and how is it reflected in other exhibits in
23 this record?
24 A. May I have the exhibits?

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1 MR. WOLFE: You've got them all.
2 BY THE WITNESS:
3 A. How is it reflected? Could you rephrase that
4 question.
5 BY MR. EWART:
6 Q. Yes. How is it reflected on --

7 A. The location.

8 Q. -- the location and what it -- this OW1, what is
9 it? What does it represent?

10 A. It represents a well, a sampling well. It's
11 called observation well number 1 and it's listed right
12 next to the one-story concrete building.

13 HEARING OFFICER FELTON: In what exhibit are you
14 referring to?

15 THE WITNESS: Referring to Exhibit Number 1.

16 HEARING OFFICER FELTON: Petitioner's Exhibit
17 Number 1.

18 BY MR. EWART:

19 Q. What does ND represent --

20 A. That represents nondetect.

21 Q. -- on the sampling report?

22 A. That represents nondetect, that there was no
23 contamination identified above the method detection
24 limit of the laboratory.

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1 Q. Now, referring to OW2, where is that located on
2 Petitioner's Number 1?

3 A. That is located farther west very close to the
4 very edge of the property near the cul-de-sac.

5 Q. Is this apparent on this document? It's in the,
6 what, the southwest corner?

7 A. The southwest corner of the property.

8 HEARING OFFICER FELTON: Is it identified
9 specifically as a number?

10 THE WITNESS: Yes, OW2.

11 HEARING OFFICER FELTON: Thank you.

12 BY MR. EWART:

13 Q. And what results does the sampling report?

14 A. It identifies --

15 Q. That's dated 4/20/99, the same one we're talking
16 about?

17 A. Right. That identifies contamination associated
18 with gasoline in that well.

19 Q. And how did you come to that conclusion that it
20 be gasoline in that well?

21 A. The constituents that are tested for are BTEX
22 also know as Benzene, Toluene, Ethylbenzene and Xylenes
23 which are the contaminants of concern identified by the
24 IEPA to be sampled for when evaluating petroleum

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1 releases associated with gasoline.

2 Q. Is it not true that Benzene, Toluene and

3 Ethylbenzene and Xylenes total represent soluble
4 portions of gasoline?

5 A. Yes.

6 Q. So this would be an indices of the soluble
7 portions of gasoline and not gasoline per se, would it
8 not?

9 A. Yes, it would.

10 Q. Now, moving on to OW Number 3, where is that
11 located on Petitioner's 1?

12 A. OW3 is located directly south of the building
13 very close to the entrance along Lake Street.

14 Q. And what is that in relation to?

15 A. That would be just southwest of the new tank
16 location.

17 Q. And what are the indices of OW3?

18 A. Those are all listed as nondetect.

19 Q. Referring to monitoring well number 3 --

20 A. Yes.

21 Q. -- on Respondent's Exhibit Number 2 --

22 A. Yes.

23 Q. -- what does MW3 represent on Petitioner's
24 Number 1?

1 A. That is one of the original wells that were
2 installed when evaluating the release of the site which
3 is why it has a different designation MW3. It is
4 considered to be an upgradient well and was also
5 installed at the property boundary to identify potential
6 releases off of the property.

7 Q. And what does ND represent underneath MW3 on
8 Respondent's Exhibit Number 2?

9 A. Nondetects or no identification of gasoline
10 constituents.

11 Q. Moving on to OW2 duplicate, could you briefly
12 explain why it would be necessary to have a duplicate
13 sample?

14 A. Typically when you do any type of environmental
15 sampling, you do an extra sample to verify the results
16 identified.

17 Q. So were there duplicates done for OW1, 2 and --
18 OW1, 2 and 3 and MW3 or was there just a duplicate done
19 for OW2?

20 A. Just a duplicate for OW2.

21 Q. Moving to the right there, field blank, can you
22 render an opinion as to what ND indicates in that and
23 why a field blank would be necessary?

24 A. A field blank was run as typically used to

1 determine whether or not there's been any
2 cross-contamination between sample of vents. The ND
3 identifies that the field blank that was used was not
4 cross-contaminated.

5 Q. Again, referring to Respondent's Exhibit
6 Number 2 in the last column it is designated as lab
7 blank and the designations are ND. Would you explain
8 what that means?

9 A. A lab blank is a container with water in it
10 that's supplied by the lab, goes with the containers
11 that are supplied to EPI or any consultant and also is
12 tracked and stored with the containers collected in the
13 field to determine whether or not there's been any
14 contamination from the lab, their containers or any of
15 the work that they've done while sampling and testing
16 the water collected in the field.

17 Q. Now, looking at the results that are on
18 Respondent's Number 2, would you have an opinion as to
19 where the contamination exists on the date of sampling
20 as indicated by the sampling results?

21 A. Yes. They verify the groundwater flow one to
22 the southwest or west, and they also identify residual
23 contamination in the groundwater that is, in fact,
24 moving away from the building towards Lake Street

1 similar to the original release.

2 Q. And what do the wells -- what do the sampling
3 results of the wells located closest to the east
4 property line or nearest the Studio 21 water well
5 indicate?

6 A. That the water there is clean in the shell
7 subsurface.

8 MR. EWART: Do you have any questions?

9 MR. DUNAWAY: Yeah, I've got a couple.

10 HEARING OFFICER FELTON: Mr. Dunaway, that's
11 fine. I just wanted to confirm that you're going to
12 have a few questions which is fine.

13 CROSS-EXAMINATION

14 by Mr. Dunaway

15 Q. Has there been any more recent monitoring done
16 at this site than the April '99 monitoring?

17 A. Yes, there has. Additional wells were installed
18 downgradient to give the Illinois EPA the exact
19 dimensions of residual groundwater contamination. That
20 is required for a corrective action plan to be approved
21 by the IEPA.

22 Q. What was the results of that monitoring?

23 A. I believe that the contamination exists under

24 Lake Street, but not on any other properties and,

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1 therefore, a highway authority agreement with IDOT will
2 be generated and proposed to close this incident
3 recorded in 1995.

4 Q. So did OW2 still have high concentrations of
5 BTEX?

6 A. On the exact -- I don't have those results in
7 front of me, but it was still, in fact, impacted, yes.

8 Q. So what remediation still needs to take place at
9 this site?

10 A. The remediation is kind of a misnomer at this
11 point in that the contamination that exists is going to
12 be managed in place, and that's what will be used to
13 close this site.

14 The tanks -- the contaminated soil out in
15 front of the building have, in fact, been removed by
16 Mr. Amin. The source and any residual soil
17 contamination that could possibly leech or the highest
18 contaminated soil located directly around those tanks
19 has, in fact, been removed. That will be included in
20 the cap, by the way, and our corrective action
21 completion report.

22 Q. There was a 1999 report, I believe it was the
23 site classification completion report, and it contained
24 a number of well logs. Can you tell me where those came

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1 from?

2 A. During site classification activities, which we
3 discussed before, and the question that was asked over
4 from that side, EPI submitted a request done at Illinois
5 State Water Survey and Illinois State Geologic Survey
6 for well information.

7 Those well logs I believe are included here
8 and I believe that's what you're referencing. Some of
9 that information is used in the site classification to
10 identify that the actual aquifer or drinking water
11 source in the area or most of the local wells is over
12 100 feet deep. Therefore, the shallow aquifer or
13 groundwater identified impacted and all of the impacts
14 are not associated with the drinking water source in the
15 area.

16 Q. Do you have any information on the depth or
17 construction of the on-site well being the KRKH well or
18 the neighboring Studio 21 well?

19 A. The Studio 21 well, no, I do not believe so.

20 Our well I believe we have. We've made several requests
21 for the actual well logs. My professional engineer in
22 my office would know that more than I would. And I
23 didn't look specifically for it.

24 Q. Is that well log included in this that you

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1 reviewed?

2 A. I didn't find it. It might be listed
3 differently. Sometimes they have a totally different
4 designation. It would be easy to review.

5 Q. And did you in your site classification -- did
6 you look at the source of water for any of the
7 neighboring site's properties around there? Are they
8 all on well water or is there a mixture --

9 A. The majority of them are because we're in
10 unincorporated DuPage County. No water service is
11 provided. The shallow subsurface materials not
12 including bed rock do not provide sufficient water or
13 quality water for drinking, and the source is really the
14 bed rock below the area.

15 MR. DUNAWAY: I don't have anything else.

16 HEARING OFFICER FELTON: Are there any other
17 further questions for Mr. Mankowski? Mr. Rao, please.

18

CROSS-EXAMINATION

19

by Mr. Rao

20

Q. Did you make any efforts to characterize the

21

subsurface geologic conditions under the site and

22

surrounding areas?

23

A. That's included in the site classification

24

complete report.

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1

Q. Is that part of the record?

2

A. I don't know.

3

MR. WOLFE: I think the report is on file with

4

the Agency, is it not?

5

THE WITNESS: Yes. It's with the IEPA, but that

6

would be the leak and underground storage tank section.

7

MR. RAO: But what I was trying to figure out

8

was whether it was part of the record in this

9

proceeding.

10

MR. WOLFE: No.

11

MR. RAO: Because the Board doesn't have access

12

to the IEPA files. If it's not part of the record,

13

would it be possible to introduce it as an exhibit or --

14

MR. WOLFE: I'll be glad to provide it to the

15

hearing officer --

16 HEARING OFFICER FELTON: Could you?

17 MR. WOLFE: -- and incorporate it into the
18 record.

19 HEARING OFFICER FELTON: Right. Please if you
20 could follow-up with, in addition to that, Petitioner's
21 Exhibit Number 3 that you'll be providing to the
22 respondent's counsel, just provide a copy of that to us,
23 one to the Board and one to me if you can.

24 MR. WOLFE: Again, with respect to 3, that has

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1 now also been modified by ink. I could probably take
2 all of these exhibits back to my office and copy them
3 and bring them back this afternoon.

4 HEARING OFFICER FELTON: Okay. That would be
5 actually most helpful if that's all right with you.

6 MR. WOLFE: That's fine.

7 HEARING OFFICER FELTON: And we'll deal with
8 that, and then if you could follow-up, I will note in
9 our hearing officer order within seven days of --

10 MR. WOLFE: We could just go through the report
11 and pull out the section, right?

12 THE WITNESS: Sure.

13 MR. WOLFE: We'll do that this afternoon also.

14 THE WITNESS: Your question is just regarding
15 the subsurface geology, literature review and boring
16 logs.

17 MR. RAO: Yeah. Since you've been talking about
18 this report, it will be helpful for the Board to have it
19 in the record.

20 HEARING OFFICER FELTON: Thank you, Mr. Rao.
21 That seems like that will work for everyone. Any
22 further questions for Mr. Mankowski?

23 Thank you very much, Mr. Mankowski.

24 Anything on redirect, Mr. Wolfe?

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1 MR. WOLFE: No.

2 HEARING OFFICER FELTON: Thank you very much.

3 MR. EWART: Madam Hearing Officer, I'd like to
4 take this document, which is identified as Table 2
5 groundwater analytical results BTEX -- it's a sampling
6 data from 17 West 532 Lake Street dated 4/20/99, by a
7 laboratory known as AEA, I would like to have this
8 identified as Respondent's Exhibit Number 2 and have it
9 admitted into the record.

10 MR. WOLFE: No objection.

11 HEARING OFFICER FELTON: Respondent's Exhibit --

12 which we will note as Respondent IEPA Exhibit Number 2
13 is admitted into the record.

14 HEARING OFFICER FELTON: Mr. Wolfe, do you have
15 anything further on behalf of Petitioner?

16 MR. WOLFE: No. Petitioner rests.

17 HEARING OFFICER FELTON: Thank you very much.

18 Now, we'll move on with Respondent, the IEPA.

19 Mr. Ewart, your first witness -- first and only witness,
20 I believe.

21 MR. EWART: Yes. Thank you, Madam Hearing
22 Officer. I have Lynn Dunaway here as a witness and he's
23 already been sworn in.

24 (Witness previously duly sworn.)

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1 DIRECT EXAMINATION

2 by Mr. Ewart

3 Q. Would you please state your name?

4 A. Lynn Dunaway, D-u-n-a-w-a-y.

5 Q. And what is your address?

6 A. Illinois EPA, P.O. Box 19276, Springfield,
7 Illinois.

8 Q. That's your business address?

9 A. Business address, yes.

10 Q. And where do you work?

11 A. I work in the groundwater section of the
12 division of public water supplies, bureau of water.

13 Q. And how long have you -- and what is your title?

14 A. Environmental protection specialist III.

15 Q. And how long have you worked at EPA?

16 A. Since February of 1988.

17 Q. And how long have you worked as an environmental
18 protection specialist number III?

19 A. Approximately five years I believe.

20 Q. What is your educational background?

21 A. I've got a bachelor of science degree in
22 geology.

23 Q. Do you have any professional certifications?

24 A. Yes, I'm a licensed professional geologist in

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1 Illinois.

2 Q. Briefly describe your duties as it relates to
3 review of waiver and exception reports?

4 A. As related to waivers and exceptions, typically
5 we'll receive a letter from someone who wishes to
6 install some sort of potential source within the minimum
7 setbacks of a well. I'll review that.

8 There are four elements that the act requires
9 be in that waiver, that being a description of the
10 potential source, a description of the potential effect
11 of the source on the water well, the technology controls
12 being used to minimize that danger and under what
13 circumstances an alternative water supply will be
14 provided to the well owner.

15 Q. How many setback zone waivers have you been
16 involved in your term with the Illinois EPA?

17 A. Approximately 70, 75 probably.

18 Q. Are you familiar with the petition in this
19 proceeding?

20 A. Yes.

21 Q. Did you review this proceeding -- this petition?

22 A. Yes, I did.

23 Q. What, if anything, did you conclude about this
24 petition?

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1 A. In the initial petition --

2 Q. For the record, it's dated August 16th, 1999.

3 A. On my review, I didn't believe that there was a
4 good demonstration that a hardship had been -- was being
5 met, an economic hardship. I didn't feel like there was

6 adequate documentation of the technology controls being
7 used at the site, and there appeared to be some
8 conflicting information as far as the geologic
9 information was concerned, so I felt like there was --
10 it was difficult to make an assessment of the potential
11 hazard to the wells.

12 Q. What, if anything, did you do with this
13 information?

14 A. I put together the technical response for the
15 Agency to the petition.

16 Q. And I show you a document submitted by the
17 Illinois EPA dated September 2nd, 1999, which is the --
18 is what?

19 A. It's the response to petition for KRKH,
20 Incorporated.

21 Q. Have you seen this document before?

22 A. Yes.

23 Q. Are your concerns and deficiencies reflected in
24 this document?

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1 A. Yes, they are.

2 Q. What, if anything, happened after the Agency
3 submitted its response in September of 1999?

4 A. KRRH submitted a supplemental petition which I
5 also reviewed.

6 Q. I show you a supplemental petition that's
7 already in the record. It's dated September 2nd, 1999.
8 Are you familiar with that document?

9 A. Yes, I am.

10 Q. Did you review this document?

11 A. Yes.

12 Q. What, if anything, would you have with regard to
13 the deficiencies whether or not they have been corrected
14 in this supplement?

15 A. As to the demonstration of undue burden or
16 hardship, I felt that that was certainly well laid out
17 in the supplemental petition. There was documentation
18 provided on the technical controls that were going to be
19 used with exact factory specifications and so forth,
20 which I felt were more than adequate for anyone to
21 review to see the quality of the equipment being used.

22 And there was additional information provided
23 from -- various reports had been submitted to IEPA, the
24 leaking underground storage tank program, however, it

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1 still left some questions in my mind as far as the

2 potential hazard to the wells.

3 Q. In what regard was this?

4 A. Well, I would have liked to have seen more
5 geologic information provided in the supplemental
6 petition itself.

7 Q. And what did you do with regard to these
8 concerns?

9 A. I checked those files out from the bureau of
10 land files, and I did review the 1995 -- I believe it
11 was the 45-day report and the 1999 site classification
12 completion report.

13 Q. Did you find the additional data there?

14 A. Yes, I did. There was a fairly large number of
15 well logs there.

16 Q. And how did this information address your
17 groundwater concerns?

18 A. Previously, there seemed to be some conflict in
19 the direction of groundwater flow, but in looking at the
20 data, it appears that the shallow aquifer that they
21 discussed, which occurs somewhere between ten and 20
22 feet below ground surface, there appears to be a bit of
23 a mound in that aquifer below the northern part of the
24 site which may cause a slight variation in groundwater

1 flow direction on site. However, on a more large scale
2 area wide assessment, it looks as though the groundwater
3 flow is, in fact, more towards the west or southwest.

4 Also in reviewing that data, I was not able
5 to find well logs that I could identify as either the
6 on-site well or the affected well, the Studio 21 well.
7 However, the other wells in the area all utilized a bed
8 rock aquifer, and on top of that aquifer, there seemed
9 to be a fairly -- I won't say uniform -- a continuous
10 low permeability layer that varied from 30 to 70 feet
11 thick between the upper aquifer and the lower aquifer
12 that the wells in here actually used.

13 Q. What conclusions have you drawn from the
14 geologic information that you've reviewed with regard to
15 this site?

16 A. It appears to me that the continuous low
17 permeability layer will provide significant protection
18 to the lower aquifer from any contaminants that may
19 exist in the upper aquifer.

20 Q. Are there any other factors you believe that
21 should be considered at the site?

22 A. Yes. Considering that, you know, there's a
23 contamination event -- well a cleanup ongoing on site,
24 it appears that this would provide -- operation of this

1 site would actually provide an economic base where the
2 cleanup can be completed and would actually provide a
3 positive environmental impact.

4 Q. Do you have any recommendations regarding this
5 proceeding, things to do at the site?

6 A. Based on the information I had which was April
7 of 1999, it appeared like there were fairly high levels
8 of contaminants still left on site. I think it would be
9 a prudent move to monitor the on-site well and prepare
10 the affected well on an annual basis to ensure a
11 continued safe water supply for potable purposes.

12 Q. Do you have an opinion as to whether the
13 proposed installation of the underground storage tanks,
14 the piping and other things at this site to become
15 operational, whether or not this would propose a hazard?

16 A. I don't believe the installation and new tank
17 would pose a significant increase in hazard to either
18 the affected well or the on-site well.

19 MR. EWART: I have no further questions.

20 HEARING OFFICER FELTON: Mr. Wolfe, do you have
21 any questions for Mr. Dunaway?

22 MR. WOLFE: Just one.

23 CROSS-EXAMINATION

24 by Mr. Wolfe

1 Q. Mr. Dunaway, Exhibit 9 attached to the petition
2 for exception dated August 16th, 1999, submission to the
3 Board purports to be a letter authored and signed by you
4 to Joe and Theresa Sclafini. Do you recognize that
5 letter?

6 A. Yes.

7 Q. And that was a letter sent by you as an employee
8 of the Illinois Environmental Protection Agency?

9 A. Yes.

10 Q. What was the purpose of that letter?

11 A. The purpose of this letter was to explain the
12 waiver process and the requirements of KRKH and their
13 obligations and responses that were open to
14 Mr. Sclafini.

15 Q. The letter was sent by the Agency under your
16 direction?

17 A. Yes.

18 Q. You signed the letter?

19 A. Yes.

20 Q. What's your normal procedure of putting letters
21 in the mail in August of '99?

22 A. Ordinarily we would, you know, address them, and

23 if there were people who needed a carbon copy, we would
24 also send them a copy as well.

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1 Q. Did you follow the normal procedure for sending
2 correspondence with respect to this letter?

3 A. I believe I did. Yes.

4 Q. Was the letter ever returned to the Agency, to
5 the best of your knowledge?

6 A. I spoke with Mr. Sclafini on the telephone after
7 that time, but I've never received any written response,
8 no.

9 Q. The question was did the letter come back, your
10 letter?

11 A. No, not that I recall.

12 Q. Do you have any reason to believe that Mr. and
13 Mrs. Sclafini did not receive the letter?

14 A. No.

15 Q. In fact, you just stated you received a
16 telephone call from them?

17 A. In fact, I believe I sent that letter via fax.
18 I don't believe I had a mailing address.

19 Q. But to the best of your knowledge, they received
20 this letter?

21 A. Yes.
22 Q. And they responded by telephone?
23 A. I believe so, yes.
24 Q. Did you ever receive any written response to

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1 this letter --
2 A. No.
3 Q. -- from the Sclafinis?
4 A. No.
5 Q. In the nature of a waiver or anything else?
6 A. No.
7 MR. WOLFE: I have nothing further.
8 HEARING OFFICER FELTON: Are there any other
9 questions for Mr. Dunaway?
10 Mr. Ewart, do you have anything else for your
11 witness?
12 MR. EWART: No.
13 HEARING OFFICER FELTON: Then the Respondents,
14 they rest or at least the Agency rests; is that correct?
15 MR. EWART: Yes.
16 HEARING OFFICER FELTON: Just for formality, I
17 just want to confirm if there is any other testimony on
18 behalf of Studio 21, Limited and Joe and Theresa

19 Sclafini and/or Midwest Bank?

20 Seeing as there appears to be no one here
21 present on their behalf, we will also proceed now if
22 there's any other testimony on behalf of any of the
23 interested persons regarding this particular petition.

24 Seeing that there's none --

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1 MR. WOLFE: I would move the proofs be closed.

2 HEARING OFFICER FELTON: Excuse me?

3 MR. WOLFE: I would move that the proofs be
4 closed as to this matter.

5 HEARING OFFICER FELTON: That proofs?

6 MR. WOLFE: That you not allow any further
7 proofs and I'm specifically referring to the people that
8 aren't here, more importantly than the people that are
9 here.

10 HEARING OFFICER FELTON: As a regulatory
11 proceeding, I will still allow for a public comment
12 period which at that time any interested party,
13 including those respondents not here today, could file
14 something, but before we get to that, I want to proceed
15 with whether or not there's any other motion that anyone
16 has.

17 MR. WOLFE: I don't have a motion, Madam Hearing
18 Officer, but certainly with respect to the prospective
19 recommendation of the Agency through the testimony of
20 Mr. Dunaway and I've just conferred with Mr. Amin
21 concerning the annual monitoring of his well, as well as
22 the affected well, assuming that the Sclafinis give him
23 permission to go on their property to do that, he would
24 have no objection to that recommendation.

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1 HEARING OFFICER FELTON: So noted for the
2 record.

3 Do the parties wish to give any closing
4 statements or would you like to waive that?

5 MR. WOLFE: Just very briefly if I can. I
6 believe that the petitioner has met all of the
7 requirements of the act concerning his attempts to
8 procure the waiver from the affected property owners.
9 That waiver was not forthcoming and, therefore, we're
10 here today seeking approval by the Pollution Control
11 Board for the water well setback exception so that we
12 can complete the business that was contemplated by
13 Mr. Amin when he purchased the property ten months ago.

14 I believe that the testimony of Mr. Amin, the

15 testimony from the agent of DRW and the agent of
16 Environmental Protection Industries clearly demonstrated
17 that we are going to be installing on this property a
18 system that will more than adequately protect the
19 environment in that the system was designed and will be
20 installed as an additional safeguard because of the
21 water well already existing on the site.

22 That was something that was contemplated from
23 the beginning, and I believe it's been demonstrated that
24 the system that will be installed will protect the

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1 environment. With respect to the water well on the
2 affected property, all of the evidence has indicated
3 that not only will that well be protected by the same
4 safeguards that are being installed by DRW, but it will
5 also be protected by virtue of the migration path of the
6 water that was testified to by Mr. Mankowski, which
7 shows the groundwater flow in a direction opposite of
8 the direction of the water well in relation to the
9 property.

10 Counsel for the Agency in examining
11 Mr. Mankowski and in introducing Respondent's Exhibit 2,
12 in fact, confirmed that monitoring well -- the GP3

13 involved, the OW2 are all away from the water well that
14 is on the affected property, thereby demonstrating that
15 if there is a concern, that concern will flow away from
16 the water well on the affected property.

17 That well was tested by Mr. Mankowski. It
18 showed as being unaffected by the 1995 spill which was,
19 as testified to, quite considerable. Therefore, I
20 believe that we have demonstrated all of those things
21 that are necessary for the Pollution Control Board to
22 approve and waive the water well setback exception as
23 provided in the act. And I thank the hearing officer
24 and all present for their time in relation to this

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1 matter.

2 HEARING OFFICER FELTON: Thank you. Mr. Ewart,
3 do you have anything you'd like to add?

4 MR. EWART: Just quite simply that the proposed
5 installation as we have demonstrated in evidence by our
6 one witness will not increase the hazard that currently
7 exists at that property, and we thereby amend our
8 response that we submitted in September of 1999 to
9 represent that effect.

10 HEARING OFFICER FELTON: We'll go off the record

11 just for a second.

12 (Discussion had off the record.)

13 MR. WOLFE: With respect to everything that
14 takes place after the hearing today, I just want to
15 reiterate to the hearing officer the fact it has been
16 ten months since Mr. Amin really believed that he was
17 going to buy the property and open a business.

18 Unfortunately, we're here today because
19 perhaps we did not get the kind of responses we
20 contemplated getting from the neighbor to our east, and
21 I would ask that the hearing officer take that into
22 account in relation to anything that you are designating
23 posthearing in relation to this matter before it gets to
24 the full board for its consideration. I think the

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1 hardships that have been placed on Mr. Amin, for no
2 reason of his own, have been substantial and will
3 continue on a daily basis.

4 HEARING OFFICER FELTON: As I noted in my
5 January 11, 2000, hearing officer order, if there was no
6 request by the parties for a formalized posthearing
7 briefing schedule, I indicated I would set a short
8 public comment period, so we'll briefly go off the

9 record so I can establish the time frame for the
10 transcript availability.

11 (Discussion had off the record.)

12 HEARING OFFICER FELTON: As the parties have
13 waived any formalized posthearing brief schedule, again
14 pursuant to my January 11th, 2000, hearing officer
15 order, I will schedule a short public comment period
16 after the transcript becomes available.

17 As the transcript will be available on or
18 about Monday, January 31st, 2000, I will establish a
19 short public comment period of seven days. That being
20 said, the public comments or any other briefs, if such
21 are submitted, are due on February 7th, 2000. The
22 mailbox rule I've set forth at 35 Illinois
23 Administrative Code 101.102(D) and 101.144(C) will apply
24 to any posthearing filings.

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1 All posthearing comments must be filed in
2 accordance with Section 106.807 of the Board's
3 procedural rules. Accordingly, the record in this
4 matter will close on February 7th, 2000. The transcript
5 will be available, we have been told, on January 31st.
6 It is usually put on the Board's website within a few

7 days of the availability.

8 I will just note our website address is www
9 dot IPCB dot state dot IL dot US. Give us a couple days
10 to get that on the website and call our office if you
11 have any problems with that.

12 Are there any other matters that anyone here
13 today would like to address regarding the petition for
14 water well setback?

15 MR. WOLFE: Nothing on behalf of the petitioner.

16 MR. EWART: Nothing on behalf of EPA.

17 HEARING OFFICER FELTON: Great. I just note
18 again for the record that respondents Studio 21, Joe and
19 Theresa Sciafini and Midwest Bank are not present with
20 us today.

21 At this time this hearing is adjourned. I
22 thank all of you for your participation and everyone
23 have a great day.

24 (End of proceeding.)

L.A. REPORTING (312) 419-9292

133

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF DUPAGE)

3 I, Michele J. Losurdo, Certified Shorthand
4 Reporter of the State of Illinois, do hereby certify

5 that I reported in shorthand the proceedings had at the
6 taking of said hearing, and that the foregoing is a
7 true, complete, and accurate transcript of the
8 proceedings at said hearing as appears from my
9 stenographic notes so taken and transcribed under my
10 personal direction and signed this _____ day of
11 _____, 2000.

12

13

14

15 Notary Public, DuPage County, Illinois
16 CSR No. 084-004285
 Expiration Date: May 31, 2001.

17

18 SUBSCRIBED AND SWORN TO
19 before me this _____ day
 of _____, A.D., 2000.

20

Notary Public

21

22

23

24