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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 (July 21, 1999; 9:25 a.m.)

3 HEARING OFFICER FELTON: Good morning and welcome. I
4 am Amy Muran Felton, and I am the Hearing Officer that
5 will be presiding over this matter this morning. I have
6 been appointed by the Illinois Pollution Control Board to
7 act as the Hearing Officer in this matter, Cass County
8 Service Company versus the Illinois Environmental
9 Protection Agency, docketed by the Board as PCB 99-31.
10 Today is Wednesday, July 21st, 1999, and it is
11 approximately 9:25 a.m. I note for the record that there
12 appears to be a few members of the public present today.

13 The hearing was scheduled and will be governed in
14 accordance with the Illinois Environmental Protection Act
15 and the Board's procedural rules. Specifically sections
16 101.220 and 101.221 of the Board's procedural rules
17 regarding hearings apply to this particular hearing. This

18 hearing is intended to develop a record for review of this
19 tax certification appeal by the entire seven member
20 Illinois Pollution Control Board. While you may already
21 be aware, I remind you that I will not be deciding this
22 case, rather the Illinois Pollution Control Board will be
23 deciding this matter. They will review the transcript of
24 the proceedings and the remainder of the record and decide

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1 this case. My job is strictly to ensure that an orderly
2 hearing and a clear record is developed so that the Board
3 can have all the proper information before it when they
4 are deciding the case. After the hearing the parties will
5 have the opportunity to submit post hearing briefs.
6 These, too, will be considered by the Board. All
7 witnesses will be sworn and subject to cross-examination.
8 The parties may ask a question of any witness.

9 Before we begin with the parties and their opening
10 statements, I would just like to introduce one particular
11 staff member from the Board who is here with us today.
12 Her name is Carol Sudman. She is the Attorney Assistant
13 to Chairman Manning.

14 At this time we will have the parties introduce
15 themselves, starting first with the petitioner.

16 MR. ROOSEVELT: Good morning. My name is Greg
17 Roosevelt. I will be representing the petitioner.

18 HEARING OFFICER FELTON: Great. And the Respondent?

19 MS. MORENO: Lisa Moreno, representing the Illinois
20 Environmental Protection Agency.

21 HEARING OFFICER FELTON: Great. Before we proceed
22 with opening statements, I would like to deal with any
23 outstanding or prehearing motions at this time. To my
24 knowledge there are no such outstanding motions. Is that

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1 everyone else's understanding as well?

2 MR. ROOSEVELT: I believe so.

3 MS. MORENO: Yes.

4 HEARING OFFICER FELTON: Great. At this time do the
5 parties have opening statements that they would like to
6 make?

7 MR. ROOSEVELT: Just brief, if I may.

8 HEARING OFFICER FELTON: All right. Please proceed
9 first with Mr. Roosevelt.

10 MR. ROOSEVELT: Thank you. We appreciate your time
11 and the attention of the Board to the matter.

12 We are here to present testimony regarding the
13 application of the Cass County FS facility. It is located

14 in Virginia, Illinois. FS is a farm cooperative service
15 owned by its members, the farmers of the State of
16 Illinois, involved in the agricultural business. The
17 cooperative had there a fuel facility and made an
18 application under 35 IL CS 200/11-10, to have tax
19 certification treatment applicable to this facility. That
20 statutory provision assigns the responsibility to the
21 Illinois EPA to review those applications and determine
22 whether the primary purpose of those facilities are
23 pollution control or abatement.

24 We will present this morning the manager, Dave

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1 Mottet, of the Cass County FS plant. He will speak to the
2 facility and give the Board some background information on
3 how it operates and what this facility does.

4 Its designer, Larry Sands, is an engineer with FS in
5 Bloomington. He is a graduate of the University of
6 Illinois in agricultural engineering. He has had broad
7 experience in the design and operation of the FS plants
8 throughout the State of Illinois. He has experience in
9 design of the facility here in Cass County. He will talk
10 about why it was designed as it was, and the bottom line
11 is that he is going to say that from his design criteria

12 in putting this facility together, the reason they put a
13 structure, and the issue here relates to a metal structure
14 that is over the area where the fuels are actually
15 dispensed, where they are actually loaded onto vehicles,
16 trucks, for distribution to the farmers in the area. He
17 will say that the shed, the structure, the building that
18 was in place here was designed and built for the purpose
19 to avoid contaminations and dispersion of the fuels to
20 groundwater and to the area surrounding the plant. The
21 pollution abatement and control is a primary purpose. It
22 is the reason they did this.

23 Prior to the construction of this building these
24 facilities state-wide have been out in the open, subject

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1 to the elements. The issue is going to be presented as to
2 why the Illinois EPA has said that this is not primarily
3 for pollution control. The Illinois EPA, as we understand
4 it, says, yes, we agree that a purpose is pollution
5 control, but the primary purpose is for the convenience
6 and the comfort of the workers there at the FS plant in
7 Cass County. And that Mr. Mottet will speak to and I
8 anticipate Mr. Sands will say, no, the comfort and
9 convenience of our workers and the operation, we, for many

10 years, did this out in the open.

11 But, frankly, it is an issue of our concern with
12 federal regulatory issues on fuels and under the SPCC
13 program particularly facilities in Illinois and with FS
14 have run into this issue. It is very much a concern and,
15 frankly, the facility is built to avoid the fines and
16 other concerns and to be a good citizen from a pollution
17 abatement consideration. So that is basically the
18 evidence, and I think the issues -- I think it is a fairly
19 narrow issue. And I hope the evidence will help the
20 Board.

21 HEARING OFFICER FELTON: Thank you. Ms. Moreno, do
22 you have an opening statement?

23 MS. MORENO: Yes, a very brief opening statement.
24 The Board has delegated the authority to do the tax

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1 certification process to the Illinois Environmental
2 Protection Agency and in the Bureau of Water, specifically
3 to Mr. Thomas McSwiggin. Mr. McSwiggin will testify about
4 the certification process in general, the criteria that he
5 considers in general when deciding whether or not to
6 certify various pieces of equipment, and he will also
7 testify as to the reasoning for this specific denial. And

8 he will essentially tell you what Mr. Roosevelt said he
9 would tell you, that it is the Agency's position that the
10 roof structure, the primary purpose of the roof structure
11 under the primary purpose test and the Property Tax Act is
12 not met here.

13 HEARING OFFICER FELTON: Thank you. If there is
14 nothing further, we will proceed now with the Petitioner's
15 case-in-chief. Mr. Roosevelt, can you identify how many
16 witnesses you will have?

17 MR. ROOSEVELT: We will have two witnesses. It will
18 be Mr. Larry Sands and Mr. Dave Mottet, and I propose to
19 call, I think, Mr. Sands first, if I may.

20 HEARING OFFICER FELTON: That would be great. He
21 will be giving the background testimony, too, mostly,
22 right?

23 MR. ROOSEVELT: Yes.

24 HEARING OFFICER FELTON: In terms of organization,

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1 too, that makes sense.

2 MR. ROOSEVELT: May I ask where he should --

3 HEARING OFFICER FELTON: If you want to have him sit
4 right next to you, if you feel comfortable. That way the
5 court reporter can hear you as well a little better.

6 (Whereupon the witness was sworn by the Notary
7 Public.)

8 L A R R Y S A N D S,
9 having been first duly sworn by the Notary Public, saith
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. ROOSEVELT:

13 Q. The court reporter is some distance from you, sir.
14 So if you would, make sure you speak up so each of us may
15 hear you. Would you give us name, please.

16 A. Larry Sands.

17 Q. And what is your occupation, sir?

18 A. I am a senior project engineer for Growmark in
19 Bloomington, Illinois.

20 Q. And what is Growmark?

21 A. Growmark is a regional farm cooperative which Cass
22 County Service Company is a member of.

23 Q. By regional, what region are we speaking to?

24 A. Growmark presently operates in Illinois, Iowa and

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1 Wisconsin, and Ontario.

2 Q. Cass County Farm Service is part of the FS system;
3 is that correct?

4 A. That's correct.

5 Q. Growmark is the old FS designation that we might
6 be familiar with; is that right?

7 A. That is correct.

8 Q. And you say you are trained as what?

9 A. My background is engineering, and my job --

10 Q. Where did you obtain your education?

11 A. The University of Illinois.

12 Q. What was your degree?

13 A. Agricultural engineering.

14 Q. And what year did you attain that degree?

15 A. In 1969.

16 Q. Since that time, how have you been employed?

17 A. I have been employed by Growmark since that time,
18 the past 30 years.

19 Q. What has Growmark asked you to do, what kind of
20 job description have you had?

21 A. I started out in the area called farm automation,
22 working with grain systems for farmers. I was gone for
23 two years in the service. I came back then in engineering
24 working with companies in designing bulk plants, ammonia

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1 facilities and propane plants. I was in the equipment

2 area for 15 years working with equipment, either buying or
3 selling, and then went back in engineering for the last
4 ten years.

5 Q. All right. At the FS plant here we have a fuel
6 distribution storage area; is that right?

7 A. That's correct.

8 Q. And what is the purpose of that facility? What
9 does FS Cass County do with that?

10 A. The purpose of the petroleum bulk plant facility
11 is to store the product and handle the products brought in
12 by transport and stored in the facility, and it then is
13 delivered in a petroleum delivery truck, delivered product
14 then to the farm or the consumer, the patron, if there be
15 a commercial account.

16 Q. Have you worked as an engineer for Growmark with
17 these types of facilities?

18 A. Yes.

19 Q. For what term and time?

20 A. Back in 1972 I started work on petroleum bulk
21 plants for four, four and a half years, and then most
22 recently, the last ten years I am back working in
23 petroleum plants. I work with equipment, but not in
24 design work on facilities.

1 Q. We are here and I think you know that we are here
2 on a question of design of this plant over in Cass County,
3 in Virginia. Did you play some role in its design?

4 A. Yes, I did. I designed the petroleum bulk plant
5 facility at Cass County Service in Virginia.

6 Q. All right. In making the design for that plant,
7 we are confronted with an issue regarding the role of
8 pollution control or abatement in its design. Was
9 pollution control or abatement a factor that you
10 considered in its design?

11 A. Yes.

12 Q. And what concerns or issues do you have in making
13 or did you have regarding Cass County, if any, on
14 pollution control or abatement?

15 A. The basic design took into account secondary
16 containment to contain the product in case there was a
17 spill either from the tanks or transferring the product
18 from the trucks bringing product in or taking product out.

19 Q. What technique or techniques did you use in this
20 facility to control pollution?

21 A. A concrete dike was constructed underneath and
22 surrounding the petroleum storage tanks, and a concrete
23 spill pad was installed, designed and installed large
24 enough to contain a spill from a transport or a delivery

1 truck or any of the piping, meters, pumps inside the
2 contained facility.

3 Q. The facility also contains -- includes a building;
4 is that correct?

5 A. Yes.

6 Q. What role, if any -- what was its function?

7 A. The building over the spill pad is designed to
8 keep -- as much as possible to keep water off the
9 structure. With average rainfall being 30, 40 inches -- I
10 am not sure exactly what it is for that area, but that's a
11 lot of water that you could have mixed with oil if you
12 have some spills, and it is difficult when you have any
13 oil on concrete. If things are not picked up right away,
14 with water on it then you have a real problem, and you
15 have a mixture of oil and water, and so you try to keep
16 water off the pad.

17 Q. I show you what has been marked as our Exhibit
18 Number 1. Can you tell me what is shown there on that
19 exhibit?

20 A. Yes. This is the facility at Virginia, for Cass
21 County Service Company. It is a 40 by 40 foot steel
22 building over a 36 foot by 36 foot concrete spill pad.
23 And there is eight steel tanks; four 19,000 gallon and
24 four 50,000 gallon tanks inside a concrete dike.

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1 Q. Does that photo accurately portray the appearance
2 at the facility?

3 A. Yes, it does.

4 Q. And could you look at our Exhibit Number 2.

5 A. Yes, it is the same, just a different angle.

6 Q. A different angle. Okay. May I ask you
7 concerning Number 3.

8 A. Yes. This is a shot inside the building, looking
9 towards the petroleum loading rack, with pumps underneath
10 it.

11 Q. Does it accurately portray the appearance of the
12 inside of the building in the petroleum loading area?

13 A. Yes, it does.

14 Q. All right. Then Number 4, please.

15 A. Yes, the same facility, just a different angle.

16 Q. All right. And Number 5?

17 A. The same thing. The same building. The same
18 structure.

19 Q. All right. And Number 9, Exhibit Number 9?

20 A. Yes, Exhibit 9 is the same structure also.

21 Q. And you took the photograph Number 9; is that
22 correct?

23 A. That's correct.

24 Q. And that --

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1 A. The device there that I was trying to get a
2 picture of -- we have spill containment, and within spill
3 containment we have -- where the transport unloads we have
4 a containment area there to catch any spills when
5 disconnecting the product line.

6 Q. All right. And Number 8?

7 A. Number 8 is the same picture, just with that door
8 closed on it rather than open.

9 Q. I will show you what has been marked as Exhibit
10 Number 7. May I ask what that is a photo of?

11 A. Photo Number 7 is actually a picture of a
12 petroleum bulk plant in Wisconsin. I think it is Wautoma,
13 Wisconsin. I am sorry. I am having trouble remembering
14 exactly the name of the facility, but it is one of our
15 member companies in Wisconsin. It was constructed before
16 the structure at Cass County. And this structure had a
17 building over it but, as you can see in the picture, there
18 is no end walls. It is just wide open. And it was an
19 earlier attempt at -- there is a spill pad underneath it.
20 It was one of our earlier designs. It would have probably

21 been in 1987, 1988, somewhere in there, I believe, is when
22 it was constructed. And the attempt was to keep water off
23 the pad, but we learned from that that we needed to have a
24 little bit more of enclosure to try to keep from blowing

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1 in so bad.

2 Q. Mr. Sands, did you make this design as shown in
3 Exhibit Number 7?

4 A. No, an engineer before me designed that particular
5 one.

6 Q. That one you found to be faulty, in any event, is
7 that correct, or you improved on it?

8 A. I wouldn't say it is faulty, but it could be
9 improved upon.

10 Q. The improvement made is reflected in the Cass
11 County facility in enclosing the ends; is that correct?

12 A. That's correct, other than the doorways to get the
13 vehicles in and out.

14 Q. Rainwater, if it comes in in significant volume in
15 a storm, is it correct that that causes mixing with the
16 oil or gas in the area, or it can?

17 A. Yes, sir.

18 HEARING OFFICER FELTON: If I may interrupt, can we

19 move to have these exhibits that we are discussing into
20 evidence right now just so that we don't further discuss
21 them until they are actually officially in the record.

22 MR. ROOSEVELT: I would move their introduction,
23 Exhibits 1 through 9. He has not discussed Number 6, so
24 with the exception of Number 6.

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1 HEARING OFFICER FELTON: Is there any objection --

2 MS. MORENO: No, not at all.

3 HEARING OFFICER FELTON: -- to moving into evidence
4 the Exhibits 1 through 9, excluding Exhibit Number 6, at
5 this time? No objections?

6 MS. MORENO: No.

7 HEARING OFFICER FELTON: Seeing there is no
8 objections, Exhibits 1 through 9, excluding Exhibit 6, are
9 currently in the record for consideration.

10 MR. ROOSEVELT: All right. Thank you.

11 (Whereupon said documents were admitted into evidence
12 as Exhibits 1, 2, 3, 4, 5, 7, 8 and 9 as of this
13 date.)

14 MR. ROOSEVELT: Thank you.

15 HEARING OFFICER FELTON: Thank you. I apologize for
16 that interruption. Would you like the question rephrased,

17 Mr. Roosevelt? I interrupted you.

18 MR. ROOSEVELT: If I may, I will just ask him again.

19 Q. (By Mr. Roosevelt) In looking at the evolution of
20 the design on these facilities, why were you enclosing the
21 ends in the Cass County facility?

22 A. To try to cut down the amount of water coming into
23 the structure.

24 Q. In fact, at Cass County has there been an instance

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1 where water has invaded?

2 A. Yes, I am sure there has. And, in fact, since the
3 building was constructed they have installed doors on the
4 west side of the structure to be closed when they are not
5 filling vehicles or unloading vehicles to try to cut down
6 on the water coming into the building.

7 Q. If it does come in, I understand that they have to
8 have it pumped out and disposed of at some cost; is that
9 correct?

10 A. Yes, that is correct. If the water is a mixture,
11 if you have a sheen of oil on it, then you can't pump it
12 out on the ground. You have to dispose of it properly.

13 Q. Let me show you what has been marked as Exhibit
14 Number 6. May I ask you what it is a photo of?

15 A. It is also a petroleum bulk plant. I am having
16 trouble remembering exactly which site it is. I am sure
17 it is in Illinois. It may be in Macoupin County. But the
18 picture -- the reason I picked the picture is it is a
19 smaller structure, more of what we were doing earlier on.
20 It is just barely large enough to cover a delivery truck
21 and not large enough for the transport.

22 Q. This would be -- did you take photo Exhibit Number
23 6?

24 A. Yes.

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1 Q. Does it accurately portray the appearance of that
2 bulk facility?

3 A. Yes, it does.

4 MR. ROOSEVELT: I move for the introduction of this
5 exhibit.

6 HEARING OFFICER FELTON: Any objection, Ms. Moreno?

7 MS. MORENO: (Shook head from side to side.)

8 HEARING OFFICER FELTON: All right. Then Exhibit
9 Number 6 is also entered into the record.

10 (Whereupon said document was admitted into evidence
11 as Exhibit 6 as of this date.)

12 Q. (By Mr. Roosevelt) As you evolved your design on

13 these, again, what was the reason for the design of these
14 structures?

15 A. The design of the structures was to keep as much
16 water as possible out so that we did not have a potential
17 mixture of spilled fuel and water. In the past ten years
18 that I have been involved, the structures have gotten
19 bigger and bigger. I looked back on records and in 1988
20 we were putting in typically a 24 by 24 spill pad with
21 a -- it was a 20 by 24 spill pad with a 24 by 30 building
22 over it. And we are now at the stage of the most recent
23 ones where we are putting in a 36 by 40 foot spill pad
24 with a 40 foot by 60 foot building over it. So we have a

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1 ten foot overhang on the ends so that we have less water
2 coming in.

3 Q. As you look at those structures, have you
4 considered the United States EPA's rulings and position
5 under SPCC regarding runoff pollution to waters?

6 A. Yes, I have.

7 Q. And --

8 HEARING OFFICER FELTON: What is the SPCC?

9 MR. ROOSEVELT: That is 40 CFR 112. Is that correct?

10 THE WITNESS: Yes.

11 HEARING OFFICER FELTON: Thank you.

12 Q. (By Mr. Roosevelt) In fact, your Hancock County
13 facility had a citation; is that correct?

14 A. That's correct.

15 Q. In the instance of Cass County and all of these
16 facilities, you are concerned about -- what is your
17 concern on runoff under SPCC?

18 A. Under the 40 CFR 112, which is Spill Prevention,
19 Control, Countermeasure plan, which is a part of that
20 requirement in there, we are required to have structures
21 that -- or have a device or a method of keeping from
22 contaminating the -- I believe it reads the navigable
23 waters in the United States. But our understanding is the
24 federal EPA's interpretations are pretty liberal, a pond

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1 or a ditch or lagoon, or a stream that goes to eventually
2 a river, it is classified as possible potential
3 pollutants.

4 Q. And in the instance of the Hancock facility, did
5 you need to make design adjustments?

6 MS. MORENO: Madam Hearing Officer, Hancock is
7 currently under appeal also, and while I don't --
8 certainly, you know, the fact that Hancock got a citation,

9 I don't have any problem with that. But I think, to be
10 honest with you, because of the pending matter with
11 Hancock I am concerned that a discussion comparing this
12 with Hancock or whatever might end up maybe a little
13 premature.

14 HEARING OFFICER FELTON: Mr. Roosevelt, do you have a
15 response to that?

16 MR. ROOSEVELT: Only to the extent that knowledge of
17 the regulatory issues that -- I am offering it only for
18 the purpose that he had knowledge of the regulatory issue
19 involved with the runoff under this program, and that that
20 factored into his design. So I don't have to get into a
21 further discussion of Hancock. I think that does get into
22 another case.

23 HEARING OFFICER FELTON: Okay. With that caveat in
24 mind, I think that if you limit it to what you have stated

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1 I think we will allow that.

2 Q. (By Mr. Roosevelt) You certainly, as you were
3 making design decisions here, particularly Cass County and
4 otherwise, are cognizant and aware of and consider the
5 regulations regarding the environment under the SPCC,
6 including the actions involving Hancock County FS; is that

7 correct?

8 A. That's correct.

9 Q. The question has been presented do we build a
10 structure like we have here in Cass County to convenience
11 our employees, the workers, the folks that are loading and
12 unloading fuel as a primary purpose. Do have you a
13 thought on that?

14 A. Well, I don't think convenience is the primary.
15 The structure was designed to contain the products being
16 handled and the secondary containment was designed to take
17 care of any potential spills that may happen. The
18 structure over the spill pad, the steel building, was
19 there to try to cut down on the amount of the rainwater
20 coming in. That's the primary purpose.

21 Q. Historically with your company, have these
22 facilities been out in the open, just as the Cass County
23 facility?

24 A. Yes.

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1 Q. Were workers loading and unloading and performing
2 the same functions in an open environment?

3 A. Yes.

4 Q. Did you design this to convenience or make the

5 workers more, I guess, comfortable or whatever in their
6 work in the facility?

7 A. Well --

8 Q. As the primary purpose?

9 A. Comfortable, I don't believe was an issue. Safety
10 was certainly an issue, as far as the steel loading dock
11 and proper stairs and all of the OSHA requirements, the
12 safety from that aspect. But, no, not as far as creature
13 comforts.

14 Q. Now, you do have a loading dock that you have
15 described. That is a separate -- that is separate from
16 the building; is it not?

17 A. The loading dock is inside the building sitting on
18 the concrete. It is a separate structure in the building.

19 Q. The loading dock is not at issue here today?

20 A. (Nodded head up and down.)

21 Q. Okay. Let me ask you about the -- in the shed or
22 the steel structure itself, you can function without it,
23 is that correct, absent a concern over pollution?

24 A. Yes.

25

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1 Q. As the designer of this facility and given your
2 background in agricultural engineering, would you say the

3 primary purpose of the building itself there at Cass
4 County was pollution control or abatement?

5 A. Yes.

6 MR. ROOSEVELT: That completes my questions.

7 HEARING OFFICER FELTON: Ms. Moreno, do you have any
8 cross-examination?

9 MS. MORENO: Yes. I realize that you have a witness
10 who is coming who is going to specifically discuss the
11 Cass County operation. So if the questions that I am
12 going to be asking Mr. Sands might be better answered by
13 somebody else, let me know because I don't necessarily
14 want to --

15 MR. ROOSEVELT: Okay.

16 CROSS EXAMINATION

17 BY MS. MORENO:

18 Q. Mr. Sands, you said that these buildings used to
19 be open?

20 A. Yes.

21 Q. About when, if you remember, what decade, if you
22 want, did your company start to enclose these?

23 A. To the best of my knowledge, probably the middle
24 1980s there was some -- in 1986 or 1987 structures were

1 starting to be built rather than just open facilities.

2 Q. Do these facilities operate year round?

3 A. Yes.

4 Q. So that in the summer and in the winter the
5 operations would be ongoing?

6 A. Yes.

7 Q. Okay. Now, looking at Exhibit Number 3, which is
8 the -- now, can you explain -- let me ask you this. Are
9 those the hoses that come from the tanks? Is this
10 basically where the trucks will come and be loaded or
11 unloaded?

12 A. Yes, that's correct.

13 Q. Does somebody stand up here on the stairs?

14 A. Yes, on the loading dock.

15 Q. All right. So this is the loading dock, is where
16 the stairs are?

17 HEARING OFFICER FELTON: Ms. Moreno, can you just
18 identify which portion of the photograph that you are
19 looking at?

20 MS. MORENO: Okay. In the middle of the photograph
21 there are some metal stairs.

22 HEARING OFFICER FELTON: Okay. Thank you.

23 Q. (By Ms. Moreno) Now, the floor is concrete; is
24 that correct?

1 A. That's correct.

2 Q. Now, if product is spilled, where does it go, what
3 happens to it?

4 A. There is a sump, a concrete sump. In this case
5 there is a concrete piping trench, and the sump is in that
6 trench, and that's the lowest spot so that is where it
7 accumulates. Obviously, it depends on how big a spill it
8 is.

9 Q. Sure. Then what happens? The product is --

10 A. If it is a spilled product of oil then they are to
11 pump it out and dispose of it in a proper manner.

12 Q. Which means what, basically?

13 A. If it was clear product and was not contaminated
14 they can mix it back in for fuel, but that is difficult
15 because there is usually dirt on the floor and it would be
16 hard to do that. So most of the time it is pumped out by
17 a service like --

18 Q. Somebody comes in and takes it away?

19 A. Yes, by the firm that is qualified to do that.

20 Q. In other words, it is not reused there at the
21 site?

22 A. No.

23 Q. And if you have water -- in your experience, from
24 the previous uncovered facilities, if you have a spill

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1 during or after rain so that the oil is mixed with the
2 water, what happens to that oil and water mixture?

3 A. If it is on a containment structure, then it would
4 have to be disposed of properly also. It is quite
5 expensive, because now you are handling all of this water
6 and not just oil.

7 Q. Physically what happens? It goes into the same
8 concrete sump as the oil would?

9 A. If you are talking about a facility that didn't
10 have a building over it?

11 Q. No. I am sorry. I am talking about if you got
12 rainwater in this facility at the same time --

13 A. Yes, if you had rainwater and a mixture of oil
14 there then you would have to pump that out by an approved
15 firm.

16 Q. You would dispose of it the same way as if it was
17 just oil by using the concrete sump and the trench?

18 A. Yes, that's correct.

19 Q. And somebody would come and pick it up?

20 A. Yes.

21 MS. MORENO: Excuse me just a second.

22 (Ms. Moreno and Mr. McSwiggin confer briefly.)

23 Q. (By Ms. Moreno) Let me see if I understand this.

24 So there is -- under this pad essentially there is the

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1 concrete trench, and that's what holds the liquid
2 material, it kind of contains it?

3 A. Yes. The whole concrete pad is sloped to a low
4 point. So it depends on the size of the spill, which a
5 bigger spill would be over a bigger area.

6 Q. Let me understand. This goes down the drain into
7 something underneath?

8 A. It is still open at the top. It is not a separate
9 tank or anything. It is part of the structure, just a
10 lower part of the structure.

11 Q. Okay. Now, as far as the design of the capacity
12 to hold spills --

13 A. Yes.

14 Q. -- what are the criteria that you take into
15 account?

16 A. The particular facility at Cass County, Virginia,
17 that was designed to hold a transport load. It will hold,
18 as I remember, close to 9,000 gallons.

19 Q. A whole transport load, does that means the amount
20 if one delivery truck spilled everything, is that what you
21 mean?

22 A. Yes, that site was.

23 Q. To your knowledge, is that something that has ever
24 happened, or is that a safety factor?

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1 A. It was a safety factor. At that stage we had two
2 or three plants similar to that that we put in after that
3 and we started putting in larger pads as far as surface
4 area, but not as deep. We got the containment closer to
5 3,800 gallons, which is the largest compartment of any
6 truck.

7 Q. Now, let me just ask you one final thing. We have
8 been talking about product. What is it exactly?

9 A. Gasoline and diesel, fuel oil.

10 Q. And if I understand it, you have delivery trucks
11 that come -- big delivery trucks that come in and fill up
12 the tanks basically and then you have the farmers and the
13 consumers who either come in and get it or you deliver it
14 to them in smaller trucks; is that correct?

15 A. It is delivered by the service company. Cass
16 County Service Company has their delivery trucks that
17 delivers it to the farmers.

18 Q. So the farmers don't come in and --

19 A. No, they are not allowed by law to come in.

20 Q. So it is just these delivery trucks and these
21 trucks are -- can operate year round, whenever they need
22 fuel?

23 A. That's correct.

24 MS. MORENO: Okay. Well, thank you very much.

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1 HEARING OFFICER FELTON: Mr. Roosevelt, before we
2 proceed, I just want to note for the record that Board
3 Member Elena Kezelis has just joined us.

4 Now, Mr. Roosevelt, if you have any redirect?

5 REDIRECT EXAMINATION

6 BY MR. ROOSEVELT:

7 Q. Mr. Sands, let's say that we have this sump pump
8 and the storage of 9,000 gallons. Does that solve the
9 problem? If you have that, let me ask why you would put a
10 shed over it? Why not let the rainwater come in and you
11 just pump it out and go on your way?

12 A. Well, the shed is to, as I said before, to keep
13 the water out, because if you have just the straight fuel
14 you could try to salvage a lot of that fuel, if you would
15 not have that much dirt in it to be filtered out. So if
16 you had rain coming in there, the rainwater -- I mean,
17 water and oil does not mix very well, so you have a

18 problem trying to separate that.

19 Q. And in a storm situation, could you exceed the
20 capacity of your storage and have an invasion of the
21 surrounding area?

22 A. Yes, certainly.

23 Q. So you are saying meteorologically in that area 30
24 to 40 inches a year on average you could have a situation

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1 where you need the cover just to avoid exceeding the
2 capacity of the pumping system?

3 A. Well, yes.

4 MR. ROOSEVELT: Okay. Thank you.

5 HEARING OFFICER FELTON: Ms. Moreno, do you have any
6 recross?

7 MS. MORENO: No.

8 HEARING OFFICER FELTON: Okay. Thank you very much,
9 Mr. Sands.

10 (The witness left the stand.)

11 HEARING OFFICER FELTON: Mr. Roosevelt, your next
12 witness, please.

13 MR. ROOSEVELT: Yes. Thank you. I call Dave Mottet,
14 please.

15 (Whereupon the witness was sworn by the Notary

16 Public.)

17 D A V E M O T T E T,

18 having been first duly sworn by the Notary Public, saith

19 as follows:

20 DIRECT EXAMINATION

21 BY MR. ROOSEVELT:

22 Q. Mr. Mottet, would you state your name, please.

23 A. Dave Mottet.

24 Q. And your occupation?

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1 A. I am the general manager of Cass County Service
2 Company.

3 Q. So you are the manager of this site that we are
4 speaking about, and you have heard the testimony this
5 morning regarding it; is that correct?

6 A. Yes, I have.

7 Q. You have been with FS as a manager for how many
8 years?

9 A. For seven years.

10 Q. Were you at that site prior to the construction of
11 the storage area, disbursal area?

12 A. No, I was not.

13 Q. May I ask, have you had instances of storms

14 occurring and rainwater involving your facility?

15 A. Yes, I have.

16 Q. What occurred there?

17 A. Most recently?

18 Q. Yes, please.

19 A. In April -- we have installed doors on the west
20 end of our building to keep the rainwater from blowing in,
21 and we try to keep them closed when the drivers are not
22 loading. In April we had a strong storm come through,
23 three inch rain, driving winds, and we ended up getting
24 400 to 500 gallons of water in our pit area, which always

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1 contains a little bit of diesel fuel in the pit area,
2 always contains a little bit of gasoline. We are required
3 to have a waste oil company come in and pump that out.
4 They charge us 90 cents a gallon to dispose of that
5 product.

6 Q. This was with the structure, the overhead building
7 in place, right?

8 A. That is correct.

9 Q. Your experience was that this was with one door
10 being opened that you experienced this?

11 A. Two west end doors were open, yes.

12 Q. You have the doors there, though, to avoid the
13 situation with the rainwater; is that correct?

14 A. That's correct.

15 Q. Your understanding, practically speaking, is this
16 building is there to avoid rainwater intrusion and
17 pollution; is that correct?

18 A. Wastewater management is the biggest challenge
19 that we have in a controlled structure like that.

20 Q. You had showed me this morning Exhibit 12. Is
21 that a billing from General Hauling Service showing the
22 costs that you incurred for your pumping of the rainwater?

23 A. Yes. The waste oil company, the registered
24 recycler, they are the company that came in and pumped the

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1 wastewater out.

2 Q. May I ask you -- I will show you Exhibit Number
3 10. What is shown there?

4 A. Exhibit 10, back when I was with Woodford FS back
5 in 1989 we had a need for commercial accounts. They
6 wanted to have tanks on their property, and they were
7 looking at pollution containment also. So they wanted us
8 to design something so that they could contain it if they
9 ever had a leak in their tank. We built some concrete

10 structures to put these tanks in, and we done that for
11 about six months. We had two or three in operation, and
12 then all of the sudden the complaints started coming in of
13 what do we do with the water in these dikes. We quickly
14 changed. I don't have a picture of that, but we quickly
15 changed and started building roofs over these tanks.

16 Q. So on Exhibit 11 is that the same kind of design
17 that you --

18 A. Yes, this is actually the company that was making
19 the tanks for us. It is Layman Precast out of Eureka,
20 Illinois.

21 HEARING OFFICER FELTON: Exhibit 11 is referring to
22 what site, the Woodford?

23 THE WITNESS: They are just portable concrete dikes.

24 HEARING OFFICER FELTON: Okay.

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1 Q. (By Mr. Roosevelt) The point of that is that your
2 experience was with the dikes not covered, did they work?

3 A. As pollution containment they worked, but it
4 brought on another problem, and that is what do we do with
5 the wastewater.

6 Q. The rainwater had to be taken off or go elsewhere;
7 is that correct?

8 A. That would be correct.

9 HEARING OFFICER FELTON: Mr. Roosevelt, are we going
10 to move for the admission of --

11 MR. ROOSEVELT: I move the introduction of 10, 11 and
12 12, please.

13 HEARING OFFICER FELTON: Is there any objection to
14 the admission of those three exhibits?

15 MS. MORENO: No, not at all.

16 HEARING OFFICER FELTON: All right. Then Exhibits
17 10, 11 and 12 are admitted into the record for
18 consideration. Thanks.

19 (Whereupon said documents were admitted into evidence
20 as Exhibits 10, 11 and 12 as of this date.)

21 Q. (By Mr. Roosevelt) Strictly from an employee
22 perspective, working and a manager, can you put -- are you
23 familiar with these facilities for FS that at some point
24 in its history were uncovered without buildings over them?

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1 A. Yes. Prior to -- in Cass County's instance, prior
2 to 1992, we never had any enclosed structure for loading
3 or unloading of petroleum products.

4 Q. So your employees were capable to function and do
5 the job of moving the vehicles in and out loading and

6 unloading with or without cover; is that correct?

7 A. That would be correct.

8 Q. Okay. What is your understanding as the reason
9 the covers went on?

10 A. To help us control or limit the amount of water
11 that would get on this area. Because, like I mentioned
12 earlier, wastewater management would be our biggest
13 challenge and a huge expense associated with it. The
14 facilities always have minute amounts of product in them,
15 so as far as cleaning them completely from water or gas or
16 diesel, it would be impossible.

17 MR. ROOSEVELT: Thank you. That completes my
18 questions. Thank you.

19 HEARING OFFICER FELTON: Ms. Moreno, do you have any
20 cross-examination?

21 MS. MORENO: Yes. Can I have a minute, please.

22 HEARING OFFICER FELTON: Yes.

23 (Ms. Moreno and Mr. McSwiggin confer briefly.)

24 MS. MORENO: Thank you.

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1 CROSS EXAMINATION

2 BY MS. MORENO:

3 Q. (By Ms. Moreno) Just to clarify, the Exhibits 10

4 and 11, these dikes, this is basically -- and I will show
5 you here your Exhibit Number 7. To the left of the
6 building I see some big tanks, and then I see like a
7 concrete wall?

8 A. Correct.

9 Q. So are we talking about -- that is the precast
10 concrete dike, the containment dike, that is basically
11 what that concrete wall is out here?

12 A. Well, one is a lot smaller scale, and the one in
13 the precast is where we are actually loading and unloading
14 fuel, so the probability of having waste gasoline or
15 diesel fuel there is very high. Whereas, the concrete
16 dike you are showing me in the exhibit -- whatever number
17 that is.

18 Q. Exhibit 7.

19 A. That is a totally enclosed structure. There is no
20 actual dispensing going on in that concrete area, so 99
21 percent of the time that is a clean area to where we can
22 dispose of that rainwater.

23 Q. Now, you don't -- inside the -- so that if you
24 were to build one of these things, because of its

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1 dispensing, it would be something that you would expect to

2 see inside of the --

3 A. That's what we started doing, yes.

4 Q. Okay. And how long ago did you start doing that?

5 A. That was the early 1990s.

6 Q. Okay. But you have not done it here in Cass
7 County?

8 A. No.

9 Q. Okay. I would like to hand you Exhibit Number 9,
10 and directing your attention to what is underneath the
11 loading dock, there is some machinery under there?

12 A. Uh-huh.

13 Q. Just for edification for myself and the Board,
14 what is that down there?

15 A. They are the motors and pumps that actually pump
16 the fuel into our trucks.

17 HEARING OFFICER FELTON: And that is which exhibit?

18 THE WITNESS: Exhibit Number 9.

19 HEARING OFFICER FELTON: Thank you.

20 Q. (By Ms. Moreno) And in Exhibit Number 3, above the
21 loading dock, could you explain just what that machine is?

22 A. The pipes come in that trough that Larry was
23 talking about. They come up underneath the loading dock
24 through these motors and pumps up to our overhead where

1 our actual loading dock is. And then right there at the
2 loading dock is a meter so that the driver can tell
3 exactly how many gallons he is loading onto his delivery
4 truck. So there are pipes that kind of reach out and fill
5 the petroleum truck.

6 Q. So if you didn't have the roof, the pipes would
7 just -- you would just put a roof over the pipes, that's
8 the standard piping you would use if you didn't have a
9 roof?

10 A. I don't know if I can answer that question. I
11 mean --

12 HEARING OFFICER FELTON: If you don't know --

13 THE WITNESS: I don't know the answer to that. I
14 guess that piping outside -- we could use the same piping
15 outside, and it would not be adverse one way or another.

16 Q. (By Ms. Moreno) No, what I was getting at was I
17 was wondering if that was specific piping or whether that
18 is just standard piping?

19 A. I don't know.

20 MR. ROOSEVELT: If you don't know --

21 THE WITNESS: I don't know the answer to that.

22 MS. MORENO: Okay. That's all of the questions I
23 have.

24 HEARING OFFICER FELTON: Mr. Roosevelt, do you have

1 any redirect?

2 MR. ROOSEVELT: No. Thank you.

3 HEARING OFFICER FELTON: All right. Thank you.

4 (The witness left the stand.)

5 MR. ROOSEVELT: We had mentioned 40 CFR Part 112
6 during the testimony of Mr. Sands, and I have a copy of
7 it. I would like to supply it directly for attention to
8 it as a federal statutory provision, and if I may submit
9 it.

10 HEARING OFFICER FELTON: Would you like to submit it
11 into evidence?

12 MR. ROOSEVELT: Yes, please.

13 HEARING OFFICER FELTON: All right. Ms. Moreno, do
14 you have any objection to the admittance of this?

15 MS. MORENO: Oh, no, no.

16 HEARING OFFICER FELTON: Okay. Exhibit Number 13 is
17 a copy of 40 CFR 112, and is admitted into the record.

18 (Whereupon said document was admitted into evidence
19 as Exhibit 13 as of this date.)

20 HEARING OFFICER FELTON: All right. Mr. Roosevelt,
21 do you have anything further?

22 MR. ROOSEVELT: No, Your Honor. That completes our
23 testimony.

24 HEARING OFFICER FELTON: All right. I guess we will

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1 now move to the Respondent's case.

2 Ms. Moreno, whenever you are ready.

3 MS. MORENO: Yes, indeed. I would like to call Mr.
4 Thomas McSwiggin.

5 (Whereupon the witness was sworn by the Notary
6 Public.)

7 T H O M A S G. M C S W I G G I N,
8 having been first duly sworn by the Notary Public, saith
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. MORENO:

12 Q. Would you please state your name for the record.

13 A. My name is Thomas G. McSwiggin.

14 Q. And where do you reside, Mr. McSwiggin?

15 A. I reside here in Springfield, Illinois.

16 Q. And what is your employment?

17 A. I am employed by the Illinois Environmental
18 Protection Agency as Manager of the Permit Section within
19 the Division of Water Pollution Control.

20 Q. How long have you been so employed?

21 A. I have been employed as Manager of the Permit

22 Section since August 1, 1977.

23 Q. And as Permit Manager, what are your duties as
24 related to tax certification?

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1 A. The Pollution Control Board, in the -- I would say
2 in the mid 1970s delegated the review function of the
3 application for tax certifications to the two permit
4 section managers within the Agency that dealt with the
5 issues for which tax certification is available. And that
6 is certification as a water pollution control device or
7 certification as an air pollution control device. And the
8 piece of it for water pollution control came to the
9 section that I manage.

10 Q. So over the years how many tax certifications
11 would you say that you have reviewed?

12 A. I probably have reviewed 400 to 500 tax
13 certifications in the almost 22 years that I have been in
14 the position.

15 Q. Okay. And what type of facilities?

16 A. The facilities that we have looked at over the
17 past years have involved -- for industrial facilities we
18 have looked at quite a few piping and treatment
19 facilities. In other words, these are systems that

20 actually collect wastewater produced by a manufacturing
21 process, bring it down to the treatment facility for the
22 treatment to treat the wastewaters and to provide effluent
23 suitable for discharge under the Board's rules or the
24 appropriate permits.

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1 We have also looked at quite a few facilities in the
2 livestock industry, basically facilities that collect and
3 contain livestock waste. Containment facilities are
4 viewed as pollution prevention in that they prevent
5 running away into the streams. Ag-chem facilities, we
6 have seen quite a few of those where we look at secondary
7 containment for storage of ag chemicals, secondary
8 containment being the concrete walls or diking systems
9 that are there to collect the contents of a tank should
10 the tank rupture or the piping system rupture.

11 In some cases we have actually looked at operational
12 pads where the trucks are loaded or the field applicators
13 are loaded, so that any spill that is lost during the
14 loading operation is collected in a pad or in a sump under
15 that pad such that it can be recovered. The whole concept
16 is to prevent the spill of material from leaving the area
17 and running off and getting access to groundwater or

18 surface waters.

19 Q. Just to clarify, with regard to Cass County, what
20 action did you take on the certification request for the
21 secondary containment structure and the concrete pad under
22 the building?

23 A. The action we took was to issue the certificate
24 saying the secondary containment structure and the pad

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1 that constitutes the loading pad are indeed eligible for
2 certification as a pollution control facility.

3 Q. So this would be consistent with the Agency's
4 actions with other types of facilities?

5 A. Yes, it would.

6 Q. Now, I would like to direct you to the tax
7 certification process. What is the basis of the pollution
8 control tax certification?

9 A. The basis of the certification is a provision in
10 the Illinois Revenue Code which provides a benefit for
11 property tax relief if a device has as its primary purpose
12 pollution control. The benefit is granted to devices that
13 control water pollution or control air pollution. The
14 definition in the Revenue Code itself of a pollution
15 control device gives us the guidance that we follow in

16 review of the certification.

17 In other words, many of these things we look at have
18 multiple purposes. Because the definition has the clause
19 that it has to be the primary purpose as a pollution
20 control device that is the guiding principle that we
21 follow in our review. In other words, in making the
22 decision of whether or not a facility is a pollution
23 control facility or not we look at its primary purpose, in
24 other words, when we talk about the primary purpose test

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1 that is essentially what we are looking at.

2 Q. Okay. Thank you. Now, how does the tax
3 certification process work?

4 A. We have put together an application system that
5 has an application form and some instructional material
6 that basically allows a person seeking this advantage to
7 complete this form to describe to us the facility for
8 which they seek the certification. It is submitted to the
9 Agency for review. The Agency's only purpose in making
10 that review is to decide whether or not a facility is a
11 pollution control facility. Going back to my previous
12 comments here a few minutes ago, we do that by looking at
13 the primary purpose at the facility.

14 If we conclude that the facility is indeed a
15 pollution control facility, we then issue a certificate
16 that goes to the applicant and to the Illinois Department
17 of Revenue, who then becomes the main state agency
18 handling the tax certification, or actually at that point
19 the tax relief, by working with the local tax assessor and
20 the other local folks that need to get involved in this
21 because we are dealing with property tax. After we make
22 our determination that it is a pollution control facility,
23 then we no longer have any responsibility as far as the
24 tax act is concerned.

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1 MS. MORENO: I would like to have a blank application
2 and instructions marked as Respondent's Exhibit Number 1,
3 please.

4 (Whereupon said document was duly marked for purposes
5 of identification as Respondent's Exhibit 1 as of
6 this date.)

7 Q. (By Ms. Moreno) Mr. McSwiggin, I want to hand you
8 what has been marked as Respondent's Exhibit Number 1. Is
9 this the package that the Agency sends out to applicants
10 for tax certification?

11 A. Yes, it is. This is the instructional material

12 and the application form itself.

13 MS. MORENO: Okay. I would like to move to admit it.

14 MR. ROOSEVELT: No objection.

15 HEARING OFFICER FELTON: Okay. Those are admitted
16 then.

17 MS. MORENO: Thank you.

18 (Whereupon said document was admitted into evidence
19 as Respondent's Exhibit 1 as of this date.)

20 Q. (By Ms. Moreno) I would like to hand you a copy of
21 the answer and record filed in this case, and I would like
22 to direct your attention to page -- I think it is
23 mechanical stamped 00001, which is the application. So is
24 this the application that we received from Cass County

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1 Service Company?

2 A. Yes, it is.

3 Q. And does it identify or describe the equipment for
4 the facility that is intended to be covered?

5 A. Yes, it does, down in section D under item one,
6 the requested action is described, pollution abatement
7 control facility. And then the applicant has provided a
8 narrative statement describing the facilities for which
9 they seek the certification.

10 Q. Okay. Now, to your knowledge -- well, let me see.
11 To your knowledge, does this facility have or is it
12 required to have any type of water related permit,
13 discharge permit or any other type of permit?

14 A. No, it does not.

15 Q. All right. Now, I would like to direct your
16 attention to page five. And could you explain what this
17 is?

18 A. Page five is a copy of the certificate as
19 originally produced and presented to me for signature. I,
20 upon reviewing it, basically said that the certificate
21 should be changed to remove the references to the steel
22 building. The comments written in -- well, in longhand in
23 the upper corner, indicate that the change was made, there
24 is some lines struck out in the certificate itself under

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1 facility description, and then changes made, notation. So
2 this was actually a draft of the original certificate
3 presented to me for signature.

4 Q. Okay. I direct your attention to page eight. So
5 could you tell us what that is?

6 A. Page eight is the same page as we previously
7 discussed, however, after the revisions had been made that

8 I had asked for.

9 Q. Could you ask -- you asked for these revisions,
10 did you not?

11 A. That's correct.

12 Q. Could you explain your rationale in asking for
13 these revisions?

14 A. The rationale for asking for these revisions is
15 that based upon the material submitted, it appeared to me
16 that the roof over the containment or the operational pad
17 was for the convenience of the employees. In other words,
18 to allow operations to continue. They are all-weather
19 operations. I did that in that the pad itself appeared to
20 have, based on the limited information in the application,
21 appeared to have been designed to serve the purpose of
22 pollution control in that it did have the volume necessary
23 to collect the contents of the truck or the tank, should a
24 hose rupture or a pump seal fail or something occur of a

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1 disastrous nature in the loading operation. So that the
2 pad had in its design the containment features which we
3 feel are necessary under the Spill Prevention Containment
4 Control program.

5 Q. Now, the --

6 A. The --

7 Q. I am sorry. Go ahead.

8 A. The roof, I felt, was basically there to allow for
9 the convenience of the employees in that we can handle
10 mixtures of rainwater and oil. It can be taken care of
11 and is taken care of many other places.

12 Q. Have you had occasion to review tax certifications
13 for any other facilities, fueling facilities like Cass
14 County?

15 A. These are relatively new on the scene. We have
16 perhaps seen only four or five of these types of
17 facilities.

18 Q. Now, have you approved the roof on any of these
19 facilities?

20 A. No.

21 Q. Have you approved roofs on any other types of
22 facilities?

23 A. Yes, we have. We have approved the roof over the
24 storage of some fertilizer and pesticide products, where

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1 the product itself would be subject to damage from
2 rainfall. If the product container itself is damaged then
3 we could have the potential for the loss of that product.

4 So in that case we view the roof as providing polluttional
5 abatement in that it prevents damage to the product and
6 subsequent loss to the product.

7 Q. So what type of product are you talking about?

8 A. We are talking about fertilizers or pesticides
9 that are stored in paper bags or containers that are
10 subject to damage from rainfall.

11 MS. MORENO: Okay. Thank you, Mr. McSwiggin.

12 HEARING OFFICER FELTON: Nothing further?

13 MS. MORENO: No.

14 HEARING OFFICER FELTON: Mr. Roosevelt, do you have
15 any cross-examination?

16 MS. MORENO: Oh, wait. Could I ask one more thing?

17 HEARING OFFICER FELTON: Please.

18 Q. (By Ms. Moreno) Mr. McSwiggin, are you familiar
19 with 40 CFR, Part 112, the oil pollution prevention regs?

20 A. I know what it is. I am not the Agency's expert
21 on it, but I am familiar with it.

22 MS. MORENO: Okay. Thanks.

23 HEARING OFFICER FELTON: All right. Thanks. Mr.
24 Roosevelt?

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BY MR. ROOSEVELT:

Q. You were asked about 40 CFR 112, and the issue of petroleum products running off to the environment. May I ask you, your position is that that is a factor here that one would have to be concerned about in the operation of this type of plant?

A. Yes.

Q. And I think in your documents and records you have agreed that a purpose of the building or structure here is pollution control; is that correct?

A. I agree that the pad underneath is. In other words, the concrete pad on which all this operation sits is indeed a pollution control device.

Q. Well, I am asking if you would agree that the structure, the building overhead, has as one of its purposes pollution control?

A. I agree that it does have a function in pollution control in that it reduces probably the handling difficulties that would occur in that it avoids water from getting mixed with the oil in the sump.

Q. I think the problem that we are presented with is how do we define primary; is that correct?

A. I think that's correct.

1 Q. Are there any rules that are published or
2 otherwise promulgated by the Agency that define what
3 primary is or is not?

4 A. There are no rules promulgated on that subject.
5 Our only guidance is the statute itself.

6 Q. And you have heard Mr. Sands discuss and state
7 that until the mid 1980s all of these facilities would be
8 open without the buildings over them. That fact -- would
9 that influence your decision, the fact that these can
10 operate without the structure overhead?

11 A. Yes.

12 Q. If he has testified as an engineer that he
13 designed these to avoid the rainwater contamination and
14 runoff of pollution and that is the purpose of them, are
15 you disagreeing with his position today?

16 A. I am not disagreeing with his position that it
17 does serve the function that he described, that it keeps
18 the water away from the collected oils, the fuels in this
19 case, that would be collected in the sump.

20 Q. The bottom line is he is saying, hey, that's the
21 primary reason we put the shed up or the building. Do you
22 disagree with his thinking on that being the reason they
23 did it?

24 A. I heard him testify to that fact, yes.

1 Q. I am trying to -- what I am trying to ask is I
2 know you are trying to make your decision, you know, based
3 upon what you have to do. Ultimately, I have to ask, do
4 you disagree with his judgement on that, that that's the
5 primary reason for pollution control for these buildings?

6 A. Yes, I do.

7 Q. Have you been out to the site? And I assume you
8 have not, but may I ask if you have?

9 A. No, I have not.

10 Q. Have you interviewed any of the employees that
11 worked around these kinds of sites in Cass County?

12 A. No, I have not.

13 Q. And I respectfully ask here, you would not be an
14 engineer by training?

15 A. Yes, I am.

16 Q. Oh. I shouldn't have asked that. May I ask what
17 your degree or background is then?

18 A. I have a degree in civil engineering going back to
19 1961. I have a Master's degree in environmental
20 engineering, which back in those days was called sanitary
21 engineering. I am a Registered Professional Engineer in
22 Iowa and Illinois.

23 Q. Mr. Sands comes in as an engineer also. Can you
24 give us your -- you were asked about 40 CFR 112. He

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1 thinks it is applicable. You are agreeing that those
2 rules would be a factor here for an engineer?

3 A. Oh, yes. Oh, yes.

4 Q. Okay. Have you reviewed any blueprints or
5 other -- they would not be called blueprints, but any
6 design specifications or done any engineering evaluation
7 of the facility itself?

8 A. I have not personally. That is the responsibility
9 of staffing in preparing the certificate.

10 Q. Do you know if they did any engineering analysis
11 on this facility?

12 A. If they did, it is very limited. It is based upon
13 the application materials.

14 MR. ROOSEVELT: Okay. That completes my questions.
15 Thank you.

16 HEARING OFFICER FELTON: Ms. Moreno, do you have
17 anything further?

18 MS. MORENO: Yes.

19 REDIRECT EXAMINATION

20 BY MS. MORENO:

21 Q. Mr. McSwiggin, have you had occasion to review any
22 court cases decided under the Revenue Act interpreting the

23 definition of primary purpose?

24 A. Yes, I have.

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1 Q. Thank you. And you followed these cases or have
2 taken these cases into account in your various decisions
3 on certifications?

4 A. Yes.

5 MS. MORENO: Thank you.

6 HEARING OFFICER FELTON: All right. Mr. Roosevelt,
7 do you have anything further that you would like to
8 recross?

9 MR. ROOSEVELT: No. Thank you.

10 (The witness left the stand.)

11 HEARING OFFICER FELTON: All right. Ms. Moreno,
12 should we move on to the next witness?

13 MR. ROOSEVELT: May we have just a moment?

14 HEARING OFFICER FELTON: Sure. Let's go off the
15 record for a few moments.

16 (Discussion off the record.)

17 HEARING OFFICER FELTON: All right. We are back on
18 the record.

19 Ms. Moreno, your next witness.

20 MS. MORENO: Thank you. I would like to call to the

21 stand Ms. Sandy Bron.

22 (Whereupon the witness was sworn by the Notary

23 Public.)

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1 S A N D R A B R O N ,

2 having been first duly sworn by the Notary Public, saith

3 as follows:

4 DIRECT EXAMINATION

5 BY MS. MORENO:

6 Q. Would you state your name for the record.

7 A. Sandra Bron, B-R-O-N.

8 Q. And where do you live, Ms. Bron?

9 A. I reside in Springfield, Illinois.

10 Q. And where are you employed?

11 A. I am employed by the Illinois Environmental

12 Protection Agency.

13 Q. And what division or department are you employed

14 in?

15 A. Currently I am employed in the Bureau of Land, the

16 Permit Section, the RCRA Corrective Action Unit.

17 Q. How long have you been there?

18 A. Approximately one year.

19 Q. And before that, where were you employed?

20 A. Prior to working in the Bureau of Land, I was
21 employed in the Bureau of Water, permit section,
22 industrial permit unit.

23 Q. How long were you employed there?

24 A. Approximately 11 years.

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1 Q. And what was your position?

2 A. I was a permit reviewer.

3 Q. Now, could you tell us what your educational
4 background is?

5 A. I have a Bachelor of Science Degree in physics and
6 a Master of Science Degree in civil engineering.

7 Q. Okay. Thank you. As part of your duties as a
8 permit reviewer, did you have occasion to review tax
9 certification applications?

10 A. I reviewed a limited number of tax certification
11 applications.

12 Q. I would like to direct your attention to the
13 answer and record filed by the Agency and Cass County
14 Service Company. And I would like to ask you, was this --
15 is this a project that you reviewed?

16 A. Yes.

17 Q. Okay. Directing your attention to page five, the
18 strike out -- the original certification that you had
19 drafted included everything in the facility description;
20 is that correct?

21 A. Yes.

22 Q. And the changes were made by your supervisors?

23 A. That's correct.

24 Q. Let me ask you this. How many tax certifications

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1 have you had occasion to review during your time in the
2 Bureau of Water?

3 A. Approximately 12.

4 Q. And you were not the only person reviewing these
5 certifications?

6 A. No.

7 Q. Okay. I would like to direct your attention to
8 page one, which is the first page of the application. So
9 this is the application that you would have based your
10 review on?

11 A. Yes.

12 Q. Okay. Did this application contain any other
13 information besides the information that is contained on
14 the face of pages one and two?

15 A. I don't believe so.

16 Q. Do you recall any engineering drawing
17 specifications or anything like that?

18 A. No.

19 MS. MORENO: Okay. Thank you.

20 HEARING OFFICER FELTON: Mr. Roosevelt?

21 CROSS EXAMINATION

22 BY MR. ROOSEVELT:

23 Q. Your job was to do the initial evaluation on this
24 application; is that right?

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1 A. That's correct.

2 Q. And as I understand it, did you prepare in this
3 record what would be at page 06 and 05?

4 A. Yes.

5 Q. You initially included the steel buildings; is
6 that right?

7 A. That's correct.

8 MR. ROOSEVELT: That completes my questions. Thank
9 you.

10 HEARING OFFICER FELTON: Anything else?

11 MS. MORENO: No. Thank you.

12 HEARING OFFICER FELTON: All right. Thank you.

13 (The witness left the stand.)
14 HEARING OFFICER FELTON: Have you completed --
15 MS. MORENO: Yes, I am finished.
16 HEARING OFFICER FELTON: All right.
17 MS. MORENO: We have no more witnesses.
18 HEARING OFFICER FELTON: All right. It seems that
19 the parties have both presented their respective cases, so
20 if we can I would like to proceed with closing statements.
21 Do the parties have closing statements that they would
22 like to make, beginning with Mr. Roosevelt?
23 MR. ROOSEVELT: Thank you. I think the question,
24 then, as we have narrowed it, and that the Board has

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1 before it, is the question of whether this is a pollution
2 control facility. I think both sides are in agreement
3 that the steel building has -- the Illinois EPA takes the
4 position, I believe, from what I heard in the testimony,
5 that, yes, that is a purpose of the steel building, that
6 the federal regulation 40 CFR, Section 112 would be
7 applicable in this situation.
8 So we are very concerned here, as Mr. Sands
9 described, with the runoff issue. He had knowledge of the
10 situation in Hancock County and the citation of the

11 federal EPA on a similar facility as this one. He, as an
12 engineer, has been designing these buildings for some
13 time. He described for the Board the evolution of that
14 design. And the manager of the facility, Mr. Mottet, told
15 the Board that until the mid 1980s, and I think Mr. Sands
16 says the same thing, that these facilities were outdoors.
17 There were no steel structures overhead. They certainly
18 were not required for the employees to function or work or
19 do their loading of the fuels. But as the pollution
20 concern became greater and the regulatory environment
21 evolved, the designs evolved also.

22 The facility up in Wisconsin was described, and one
23 in Macoupin County, Illinois, that preceded the Cass
24 County facility in its design. Those were somewhat

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1 different, and Mr. Sands made it clear that what has
2 evolved over time is we have built the buildings even more
3 enclosed than they originally were. The first designs
4 left both ends open. The experience showed that rainwater
5 involvement was problematic. Therefore, they closed them
6 to a greater degree and expanded the size to assure
7 against any rainwater involvement.

8 Ultimately Mr. Sands was cross-examined on the

9 question of the pumping sump system that is involved in
10 these and the storage, and he believes and testified that
11 with a storm and rainwater involvement if we left these
12 just simply open we could exceed easily the capacity of
13 our pumping system. We have the risk of contamination of
14 the surrounding area, and we would be polluting, and
15 certainly that is where the CFR regulations and our
16 concern with groundwater contamination arises. FS, by its
17 engineer and its local manager, says this is why we built
18 the steel structures. This is why we have evolved these
19 designs. This is its purpose.

20 I think if you look at the CFR regulations and the
21 risks here, and in the public policy of the State of
22 Illinois, which we don't want to overlook, because the
23 legislature passed this for a purpose. The thinking
24 clearly is we are going to somehow as a public policy

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1 encourage industry, including the agricultural industry to
2 undertake, to protect the environment and its neighbors
3 and even its own farm customers, and in order to foster
4 that and from a public policy perspective the State
5 encourage it, let's give a tax break, a modest tax break,
6 albeit, but one which would help just particularly in this

7 example.

8 I know it is difficult because the EPA has not been
9 out to the site, and the history of its evolution and the
10 engineering factors that went into consideration of Mr.
11 Sands was not known by the EPA as it made its judgement
12 and decision. I think the Board now has the benefit of
13 that experience that FS has explained and presented. And
14 I think that we have clearly shown that what we are doing
15 with these facilities is designing the best possible
16 structure to mitigate and create the lowest risk to water
17 contamination, to avoid it if at all possible, and that
18 includes some expense and some capital expenditure to
19 build these buildings. I think that's what the
20 legislature and the governor of Illinois wanted to see,
21 then, was the encouragement and fostering of that kind of
22 action, and to benefit those responsible parties that are
23 making that effort.

24 So I respectfully suggest, given the information in

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1 the record here, that we have shown that this building
2 should enjoy that tax certification. Thank you.

3 HEARING OFFICER FELTON: Thank you. Ms. Moreno.

4 MS. MORENO: Yes. As Mr. McSwiggin testified, he has

5 reviewed over 400 tax certifications in his career at the
6 Illinois Environmental Protection Agency. He has applied
7 the primary purpose, and he testified that he is aware of
8 the cases which explicate the primary purpose test in the
9 statute. While it is certainly true that one of the
10 purposes of the statute is to foster pollution control, we
11 would ask the Board not to lose site of the fact that this
12 is a revenue statute, and as such is to be strictly
13 construed against the party that seeks to benefit from the
14 statute.

15 Essentially the practical result of this is that the
16 local taxing authorities do not get the full -- the full
17 taxable value if a certificate is issued. And the only
18 reason that the Agency would stress this is because when
19 we normally appear before the Pollution Control Board we
20 do appear in connection with environmental statutes, which
21 generally are very liberally construed for public
22 purposes. Here we are dealing, however, with a revenue
23 statute and the approach to application of these types of
24 statutes is, we would argue, somewhat different from the

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1 normal.

2 Again, as Mr. McSwiggin testified, the only time that

3 we have in the past certified roofs has been in the
4 circumstance where exposure to the elements would directly
5 harm the product, as in paper bags. In this case we know
6 that this activity can be done -- or is not -- let me say
7 this. That this activity is not directly affected by
8 rainwater. It is more a question of mixture of oil and
9 water and the difficulties of disposing of that.

10 So under the circumstances, we believe that the
11 Agency's decision to certify only the secondary
12 containment structure and the concrete pad and to deny the
13 certification of the roof was the correct one, and was
14 entirely consistent with the Property Tax Act and the
15 cases decided thereunder. Thank you.

16 HEARING OFFICER FELTON: Thank you. Any other
17 statements? Let's go off the record for just a second.

18 (Discussion off the record.)

19 HEARING OFFICER FELTON: Back on the record. Okay.
20 The transcript in this matter will be available by August
21 2nd, 1999. The parties have expressed the desire to file
22 post hearing briefs. Consequently, the Petitioner's post
23 hearing brief will be due on August 16th, 1999.

24 The Respondent's response to Petitioner's post

1 hearing brief will be due on August the 30th.

2 The Petitioner's reply will be due on September the
3 7th. This briefing schedule will also be outlined in a
4 Hearing Officer Order that I will send out to the parties
5 after this hearing is completed. Therefore, the record in
6 this matter will close once all of the briefs are
7 submitted and this will be ready for the Board's
8 consideration.

9 The mailbox rule at 35 Illinois Administrative Code
10 101.102(d) and 101.144(c) applies to all post hearing
11 filings.

12 All right. Are there any other matters that we need
13 to discuss with regard to this case?

14 Okay. Seeing that there are no other matters, this
15 hearing is adjourned. I thank all of you for your
16 attention and participation today. Thanks.

17 MS. MORENO: Thank you.

18 MR. ROOSEVELT: Thank you.

19 (Hearing exhibits were retained by
20 Hearing Officer Amy Muran Felton.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for
6 the County of Montgomery, State of Illinois, DO HEREBY
7 CERTIFY that the foregoing 67 pages comprise a true,
8 complete and correct transcript of the proceedings held on
9 the 21st of July A.D., 1999, at 600 South Second Street,
10 Springfield, Illinois, in the case of Cass County Service
11 Company v. IEPA, in proceedings held before the Honorable
12 Amy Muran Felton, Hearing Officer, and recorded in machine
13 shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and
15 affixed my Notarial Seal this 30th day of July A.D., 1999.

16

17

18

19 Notary Public and
Certified Shorthand Reporter and
20 Registered Professional Reporter

21

CSR License No. 084-003677
22 My Commission Expires: 03-02-2003

23

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