
1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 IN THE MATTER OF:)

4 MAC Investments, D/B/A)

5 OLYMPIC OLDSMOBILE,)

6 Petitioner,)

7 vs.) No. PCB-01-129

8 OFFICE OF THE STATE FIRE)

9 MARSHAL,)

10 Respondent.)

11

12 The following proceedings were held
13 before HEARING OFFICER BRADLEY P. HALLORAN,
14 taken before Rosemarie LaMantia, CSR, a notary
15 public within and for the County of DuPage and
16 State of Illinois, at the James R. Thompson
17 Center, 100 West Randolph Street, on the 23rd
18 day of July, A.D., 2002, scheduled to commence
19 at 9:00 o'clock a.m.

20

21

22

23

24

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1 A-P-P-E-A-R-A-N-C-E-S:

2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 Suite 11-500
5 Chicago, IL 60601
6 (312)814-8917
7 BY: MR. BRADLEY P. HALLORAN, Hearing Officer

8 STATE OF ILLINOIS
9 OFFICE OF THE ATTORNEY GENERAL
10 ATTORNEY GENERAL JIM RYAN
11 188 West Randolph Street, 20th Floor
12 Chicago, IL 60601
13 (312)814-3374
14 BY: MS. KENDRA POHN
15 MR. JOEL STERNSTEIN

16 and

17 OFFICE OF THE STATE FIRE MARSHAL
18 1035 Stevenson Drive
19 Springfield, IL 62703
20 (217)785-4143
21 BY: MR. JOHN J. PAVLOU
22 Appeared on behalf of the Respondent;

23 GARY A. WEINTRAUB, P.C.
24 465 Central Avenue, Suite 100
Northfield, 60093
(847)441-8535
BY: MR. GARY A. WEINTRAUB
Appeared on behalf of the Petitioner.

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1 HEARING OFFICER HALLORAN: Good
2 morning. My name is Bradley Halloran. I'm a
3 hearing officer here with the Illinois Pollution
4 Control Board. I'm also assigned to this
5 matter. This matter being PCB-01-129, entitled,
6 MAC Investments, d/b/a as Olympic Oldsmobile,
7 versus the Office of the State Fire Marshal.

8 This is an appeal regarding OSFM'S
9 determination of deductibility concerning
10 underground storage tanks under Section 57.9 of
11 the act.

12 It's approximately 9:10 on July 23rd in
13 the year 2002.

14 I want to note for the record that
15 there are no members of the public here,
16 correct? I see no hands, but if there were, of
17 course, they would be allowed to testify subject
18 to cross-examination.

19 We're going to run this hearing
20 pursuant to Section 105, Subpart E, and Section
21 101, Subpart F under the board's general
22 provisions.

23 I also want to note that this hearing
24 is intended to develop a record for review by

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1 the seven members of the Illinois Pollution
2 Control Board. That being the case, I will not
3 be making the ultimate decision in the case, the
4 seven members will. They'll review the
5 transcript of this proceeding and the remainder
6 of the record and they will render a decision in
7 this matter.

8 My job is to insure an orderly hearing
9 and a clear record and to rule on any
10 evidentiary matters that may arise.

11 After the hearing, the parties will
12 have an opportunity to submit post-hearing
13 briefs and we'll go off the record to get a
14 schedule on that when the time comes.

15 With that being said, the parties have
16 indicated that they wish to file a joint
17 stipulation of facts, is that correct?

18 MR. WEINTRAUB: Yes, sir.

19 MS. POHN: Yes.

20 HEARING OFFICER HALLORAN: And it
21 involves two pages and I'll go ahead and mark
22 that as Hearing Officer's Exhibit No. 1 and that
23 will be admitted.

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1 admitted.)

2 HEARING OFFICER HALLORAN: With that
3 said, would the Petitioner like to introduce
4 himself, please?

5 MR. WEINTRAUB: For the record, my name
6 Gary Weintraub representing the Petitioner, MAC
7 Investments.

8 HEARING OFFICER HALLORAN: Ms. Pohn?

9 MS. POHN: For the record, my name is
10 Kendra Pohn, P-O-H-N, representing the Office of
11 the State Fire Marshal.

12 MR. STERNSTEIN: Joel Sternstein,
13 co-counsel to Ms. Pohn.

14 HEARING OFFICER HALLORAN: Mr.
15 Weintraub, would you like to make an opening
16 statement?

17 MR. WEINTRAUB: Yes. Thank you.

18 The leaking underground storage tank
19 program is governed by Title 16 of the
20 Environmental Protection Act, 415 ILCS 5/57 and
21 following. That title, that statute contains
22 certain definitions. Those definitions are set
23 forth in Section 57.2 of the act.

Among those statutory definitions is a

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1 definition of the term site. That definition is
2 as follows: Site means any single location,
3 place, tract of land or parcel of property
4 including contiguous property not separated by
5 public right-of-way.

6 There will be no dispute in this
7 hearing, the evidence will show, that the
8 property commonly known as 3350 North Cicero
9 Avenue in Chicago constitutes a single site
10 under that definition.

11 The evidence will show that this
12 property was and is a single parcel not
13 separated or divided by any street or public
14 right-of-way.

15 The evidence will also show, and this
16 is part of the stipulation, that there were six
17 underground storage tanks on the site. The
18 Petitioner was charged a deductible amount of
19 \$15,000 with respect to five of those tanks, and
20 was charged or assessed a second \$15,000
21 deductible with respect to the sixth tank.

22 Petitioner contests the assessment of

23 this second \$15,000 deductible for the site.

24 The evidence will show that the second

8

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1 deductible was assessed because the sixth tank
2 was located allegedly more than 100 feet from
3 the other five tanks.

4 Title 16 of the environmental
5 protection act contains no 100 foot rule or any
6 other definition or provision establishing such
7 a rule.

8 The determination based on this
9 so-called 100 foot rule was wrong as a matter of
10 law.

11 Thank you very much.

12 HEARING OFFICER HALLORAN: Thank you,
13 Mr. Weintraub.

14 Ms. Pohn.

15 MS. POHN: Good morning, Mr. Halloran.

16 HEARING OFFICER HALLORAN: You can stay
17 seated if you'd like.

18 MS. POHN: Thank you.

19 HEARING OFFICER HALLORAN: Good
20 morning.

21 MS. POHN: Essentially the heart of
22 this dispute centers on these several

23 underground storage tanks previously referenced
24 by Mr. Weintraub located at the 3350 North

9

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1 Cicero address in Chicago. This is an address
2 consisting of ten lots or a full city block and
3 it's the home of the former Olympic Oldsmobile
4 dealership.

5 On the northern part of the 3350 North
6 Cicero property five USTs were placed together.
7 The state's witnesses and exhibits will prove
8 that the owners of this property discovered
9 those USTs, the Illinois Emergency Management
10 Agency was notified as to the existence of the
11 USTs and the occurrence of a release from them.
12 Those USTs were then removed as stipulated in
13 April of 1999.

14 On the southern part of that same
15 property a lone UST was discovered over 100 feet
16 from the initial five USTs in the northern part
17 of the property. The state's witnesses and
18 exhibits will, again, show that the Illinois
19 Emergency Management Agency was notified of the
20 presence of the lone UST and the occurrence of a
21 release from it. The lone southern tank was

22 removed in October of 2000.

23 It's the state's contention that these
24 two separate groupings of USTs, the five in the

10

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1 northern portion of the property, and the lone
2 UST in the southern portion of the property, are
3 separate tank fields. Tank fields is a term
4 defined in Part 732 of the Pollution Control
5 Board regulations. As such each tank field has
6 and should have a separate \$15,000 deductible,
7 according to Section 57.9 of the Environmental
8 Protection Act. Further, Section 57.9 of the
9 act allows for a deductible to apply annually an
10 to each occurrence. The facts in this case show
11 there are two separate and distinct occurrences
12 which happened greater than a year apart.

13 Because there are two separate occurrences, more
14 than a year apart, each occurrence has a
15 separate \$15,000 deductible, according to
16 Section 57.9 of the Environmental Protection
17 Act.

18 For the foregoing reasons the Office of
19 the State Fire Marshal is seeking to have the
20 pollution control board deny the Petitioner's
21 request to relief and to uphold the

22 determination of the second \$15,000 deductible
23 for the lone UST located in the southern portion
24 of 3350 North Cicero.

11

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1 Thank you.

2 HEARING OFFICER HALLORAN: Thank you,
3 Ms. Pohn.

4 Mr. Weintraub, you may call your first
5 witness, please.

6 MR. WEINTRAUB: Petitioner would call
7 Margaret Wisniewski and you wish her to be
8 seated where?

9 HEARING OFFICER HALLORAN: There was a
10 chair there.

11 (Whereupon the witness was first duly
12 sworn.)

13 MARGARET WISNIEWSKI,
14 called as the witness herein, having been first
15 duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. WEINTRAUB:

19 Q. Will you state your full name for the
20 record, please?

21 A. Margaret Wisniewski.
22 Q. Are you presently employed?
23 A. Yes, I am.
24 Q. By whom?

12

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1 A. MAC Investments.
2 Q. Okay. And what is your title or
3 position?
4 A. Administrative business manager to
5 Michael Christapolous (phonetic).
6 Q. And is Mr. Christapolous the sole owner
7 of MAC Investments?
8 A. Yes, he is.
9 Q. Mr. Christapolous is also the owner of
10 various other car dealerships that operate at or
11 about 3300, 3200 North Cicero, is that correct?
12 A. Yes.
13 Q. Those include Olympic Dodge and Olympic
14 Oldsmobile?
15 A. Olympic Dodge.
16 Q. Are there any other Olympics?
17 A. Currently, no.
18 Q. Okay. And does your role as assistant
19 business manager to Mr. Christapolous include
20 assisting him on matters involving MAC

21 Investments?

22 A. Yes, it does.

23 Q. Are you familiar with the property
24 commonly known as 3350 North Cicero Avenue in

13

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1 Chicago?

2 A. Yes.

3 Q. And is that owned by MAC Investments?

4 A. Yes, it is.

5 Q. Showing you what I've marked as
6 Petitioner's Exhibit No. 1, a site map.

7 MS. POHN: Thank you.

8 BY MR. WEINTRAUB:

9 Q. In the lower right-hand corner there is
10 a figure circled 3350, do you see that?

11 A. Yes.

12 Q. Is that the property at 3350 North
13 Cicero Avenue, which is the subject of this
14 proceeding?

15 A. Yes, it is.

16 Q. And there is a sketch called auto sales
17 and service. Does that outline, although I'm
18 not asking you to opine as to the dimensions,
19 the approximate location of the auto sales and

20 service building that was formerly on that
21 property?

22 A. Yes, it is.

23 Q. Showing you what I've marked as
24 Petitioner's Exhibit 2, for identification.

14

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1 HEARING OFFICER HALLORAN: Mr.
2 Weintraub, before we go any further, I thought
3 you had stickers, they're just kind of -- it is
4 just kind of written on there, correct?

5 MR. WEINTRAUB: It is.

6 Do you want a sticker or just the
7 original?

8 HEARING OFFICER HALLORAN: Just put a
9 sticker on there, as you go along, 2, 3, 4.

10 MR. WEINTRAUB: Let me make 1.

11 HEARING OFFICER HALLORAN: Please.
12 Thank you.

13 BY MR. WEINTRAUB:

14 Q. You now have in front of you
15 Petitioner's Exhibit No. 2. Can you tell us,
16 please, based on this page of the map that
17 appears whether the property at 3350 North
18 Cicero Avenue in Chicago is shown there on?

19 A. Yes, it is.

20 Q. And what are the boundaries of the
21 property at 3350 North Cicero?

22 A. Cicero Avenue on the east, Henderson on
23 the south, Roscoe on the north, an alley on the
24 west.

15

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1 Q. And, therefore, from the dimensions or
2 the boundaries that you've just given, the
3 property at 3350 North Cicero consists of ten
4 lots shown within those boundaries labeled 1
5 through 10?

6 A. Correct.

7 Q. I'm short one copy. I'll share this
8 one with you. Showing you what is marked as
9 Petitioner's Exhibit 3, a copy of a survey. Is
10 this a survey of the property at 3350 North
11 Cicero Avenue?

12 A. Yes, it is.

13 Q. Does this survey depict the location of
14 the dealership building which was formerly on
15 that site?

16 A. Yes, it is.

17 Q. And, again, the boundaries shown on the
18 survey are West Roscoe Street on the north,

19 Cicero Avenue on the east, West Henderson Street
20 on the south and an alley on the west, is that
21 correct?

22 A. Yes, it is.

23 Q. And the dimensions as shown on that
24 survey for this, the site, are 266 feet, is that

16

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1 along Cicero Avenue?

2 A. Correct.

3 Q. And 125 feet in depth?

4 A. Correct.

5 Q. And that survey also shows the legal
6 description of the property, is that true and
7 correct, to the best of your knowledge?

8 A. Yes.

9 Q. Ms. Wisniewski, I'm going to hand you
10 two photographs, which I've marked as
11 Petitioner's Exhibit 4A and 4B.

12 Would you tell us, please, what these
13 photos depict?

14 A. The building that was on 3350, which is
15 an automobile sales and service.

16 Q. And that building is no longer there?

17 A. No, it's not.

18 Q. It was demolished when?

19 A. In October of 2000.

20 Q. And you're familiar with that building,
21 you worked for MAC Investments in October of
22 2000 and before?

23 A. Correct.

24 Q. And that was a single building which

17

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1 occupied the entire rear portion of the site?

2 A. Correct.

3 HEARING OFFICER HALLORAN: Thank you,
4 Mr. Weintraub.

5 BY MR. WEINTRAUB:

6 Q. Ms. Wisniewski, are you familiar with
7 the reimbursement eligibility and deductible
8 application which was filed under the leaking
9 underground storage tank program for the
10 property at 3350 North Cicero Avenue in Chicago
11 on or about June 13 of the year 2000?

12 A. Yes, I am.

13 Q. Handing you what has been marked as
14 Petitioner's Exhibit No. 5. Is that a copy of
15 such application?

16 A. Yes, it is.

17 Q. And it shows under paragraph A a

18 contact person. Is that you?

19 A. Yes, it is.

20 Q. And it shows on the last page the date
21 of registration?

22 A. Correct.

23 MR. WEINTRAUB: Just for the record on
24 the stipulation that we entered, we changed by

18

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1 hand, I don't think we initialed, the date of
2 registration of certain of the tanks from 4/2 to
3 4/12 on page 1.

4 HEARING OFFICER HALLORAN: Okay. I see
5 it.

6 THE WITNESS: Date of removal.

7 HEARING OFFICER HALLORAN: And it is
8 tank numbers 1 through 5.

9 MR. WEINTRAUB: Right.

10 HEARING OFFICER HALLORAN: 4/12/99, for
11 the records.

12 MR. WEINTRAUB: And the date of
13 removal --

14 THE WITNESS: The date of registration
15 is correct. It was the date of removal that --

16 BY MR. WEINTRAUB:

17 Q. And the date of removal as shown on the

18 last page of Petitioner's Exhibit 5 is 4/12/99,
19 is that correct?

20 A. Correct.

21 Q. Which is now consistent with the
22 corrected stipulation.

23 Showing you Petitioner's Exhibit 6, a
24 UST removal information sheet. Does this

19

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1 document show the substances in five tanks
2 located at 3350 North Cicero Avenue, which were
3 covered by the June 13th, 2000, reimbursement
4 application?

5 A. Yes, it does.

6 Q. And what was the substance in the tank
7 identified as tank 1?

8 A. Gasoline.

9 Q. And the substance in the tank
10 identified as tank 2?

11 A. Waste oil.

12 Q. And 3 through 5?

13 A. Used oil, heating oil.

14 MS. POHN: I object. It does not say
15 heating oil. It says used oil on the exhibit.

16 HEARING OFFICER HALLORAN: Mr.

17 Weintraub.

18 MR. WEINTRAUB: The exhibit says what
19 it says. Perhaps I can ask a clarification
20 question.

21 HEARING OFFICER HALLORAN: Where are we
22 talking? Where are we?

23 MR. WEINTRAUB: Comments, lower
24 left-hand corner.

20

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1 HEARING OFFICER HALLORAN: I see 175
2 gallons of used oil. Is that 3 to 5?

3 MR. WEINTRAUB: Correct.

4 HEARING OFFICER HALLORAN: And then
5 tanks 2, 550 gallons of waste oil. Tank 1, 2000
6 gallons of gasoline.

7 MR. WEINTRAUB: Correct.

8 BY MR. WEINTRAUB:

9 Q. Ms. Wisniewski, what is your
10 understanding of the term used oil?

11 A. Well, I'm not -- it's heating oil but
12 I'm not sure who completed this but the tanks as
13 applied for with the state fire marshal were
14 heating oil.

15 Q. And that is shown on the last page of
16 Exhibit 5?

17 A. Correct.

18 Q. Okay. And to your knowledge, those
19 tanks contained heating oil?

20 A. Correct, as applied for.

21 Q. I'm showing you what has been marked as
22 Petitioner's Exhibit No. 7. Is this a true and
23 correct copy of a determination letter received
24 from the Office of the State Fire Marshal on or

21

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1 about July 14, 2000, with respect to tanks
2 located at 3350 North Cicero Avenue?

3 A. Yes, it is.

4 Q. And MAC Investments was assessed a
5 deductible of \$15,000 under this determination,
6 is that correct?

7 A. That's correct.

8 Q. At some point in time, Ms. Wisniewski,
9 did MAC Investments determine that another tank
10 other than the five tanks shown in the initial
11 application was located or present on the
12 property commonly known as 3350 North Cicero
13 Avenue?

14 A. Yes, we did.

15 Q. Was that tank located under the same

16 building?

17 A. Yes, it was.

18 Q. And was that located further to the
19 south and to the rear of the property?

20 A. Yes, it was.

21 Q. Did MAC Investments submit a second
22 reimbursement eligibility and deductible
23 application for the property at 3350 North
24 Cicero Avenue?

22

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1 A. Yes, we did.

2 Q. Showing you what has been marked as
3 Petitioner's Exhibit 8, is this the second
4 application which was submitted?

5 A. Yes, it was.

6 Q. And it was submitted on or about
7 January 19th, 2001?

8 A. Yes.

9 Q. And this relates to the sixth tank
10 which existed on the property at 3350 North
11 Cicero Avenue, is that correct?

12 A. Correct.

13 Q. And, again, on page 1 you were shown as
14 the contact person, is that correct?

15 A. Correct.

16 Q. And, in fact, you signed this
17 application for MAC Investments, is that
18 correct, or for Mr. Christapolous?

19 A. Yes, I did.

20 Q. Showing you what has been marked as
21 Petitioner's Exhibit No. 9, a second UST removal
22 information sheet. Does this show the substance
23 that was located in the sixth tank on the site?

24 A. Yes, it does.

23

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1 Q. What was that substance?

2 A. Heating oil.

3 MR. WEINTRAUB: May I have one moment?

4 HEARING OFFICER HALLORAN: Yes, you
5 may. We can go off the record.

6 (Off the record.)

7 BY MR. WEINTRAUB:

8 Q. Ms. Wisniewski, I'm showing you what
9 I've marked as Petitioner's Exhibit 10, a second
10 determination letter from the Office of the
11 State Fire Marshal, this one is dated February
12 21, 2001.

13 Does this relate to the sixth
14 underground storage tank, which was located on

15 the property at 3350 North Cicero Avenue?

16 A. Yes, it does.

17 Q. And was MAC Investments assessed a
18 second deductible with respect to that tank?

19 A. Yes, it was.

20 Q. And the amount of that second
21 deductible was what?

22 A. \$15,000.

23 Q. Now, this sixth tank and all of the
24 first five tanks were all located on the same

24

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1 site bounded on the north by West Roscoe Street,
2 on the east by North Cicero Avenue, on the south
3 by Henderson Street and on the west by an alley,
4 is that true?

5 A. That's true.

6 Q. The site commonly known as 3350 North
7 Cicero Avenue in Chicago was formerly improved
8 with a single one story brick and frame
9 building, is that correct?

10 A. Correct.

11 Q. And all six of the tanks on the site
12 were under or around that same building?

13 A. Correct.

14 Q. Was the site at 3350 North Cicero

15 Avenue in Chicago treated as a single enterprise
16 by MAC Investments?

17 A. Yes, it was.

18 Q. What was the business that was
19 conducted in that site and building?

20 A. Automobile sales and service.

21 Q. Was the property commonly known as 3350
22 North Cicero Avenue in Chicago divided by any
23 road?

24 A. No, it was not.

25

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1 Q. Was it divided by any alley?

2 A. No, it was not.

3 Q. Was it separated by any public way,
4 public right-of-way?

5 A. No, it was not.

6 Q. Did all six of the tanks which were
7 located at 3350 North Cicero Avenue exist on
8 the property before Mr. Christapolous and MAC
9 Investments acquired the property?

10 A. Yes.

11 Q. Ms. Wisniewski, was the -- first of
12 all, when did you say the building was
13 demolished?

14 A. October, started in September, then
15 went into October of 2000.

16 Q. Was the demolition of the building, the
17 cleaning of the site and the removal of the
18 tanks all one continuous project?

19 A. I'm sorry?

20 Q. Was the demolition of the building and
21 the removal of the tanks and the cleaning of the
22 site all one continuous project?

23 A. Yes.

24 MR. WEINTRAUB: I have no other

26

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1 questions.

2 HEARING OFFICER HALLORAN: Thank you,
3 Mr. Weintraub.

4 Ms. Pohn, any cross?

5 MS. POHN: Yes. First, however, I'd
6 like to object for the record to the entry of
7 all of the exhibits proffered by the Petitioner
8 as lacking in any foundation or authenticity.

9 HEARING OFFICER HALLORAN: Mr.
10 Weintraub.

11 MR. WEINTRAUB: First, I haven't
12 offered them yet.

13 Second, she stipulated to some of them,

14 the applications and the determination letters.

15 HEARING OFFICER HALLORAN: Well, if
16 you're not going to offer them, we'll take that
17 up at that time.

18 MR. WEINTRAUB: I'm happy to offer them
19 now, if that is her pleasure.

20 At this point, Petitioner would offer
21 Petitioner's Exhibits 1 through 10.

22 HEARING OFFICER HALLORAN: And I think
23 you have Exhibit 4 that was a 4A and 4B being
24 photographs.

27

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1 MR. WEINTRAUB: Correct.

2 HEARING OFFICER HALLORAN: Ms. Pohn,
3 what is your objection?

4 MS. POHN: That Petitioner has failed
5 to lay -- aside from the exhibits stipulated, to
6 the authenticity of which -- previously which
7 were the applications and the letters of
8 response from the OSFM, Petitioner has failed to
9 lay any foundation for the exhibits or to
10 authenticate the exhibits.

11 HEARING OFFICER HALLORAN: Exhibits, if
12 you can lay the exhibits out, is it Exhibit 1?

13 MS. POHN: Exhibit 1, 2. Exhibit 3

14 I'll accept as a government document. And

15 Exhibit 4.

16 MR. WEINTRAUB: Well, Exhibits 1 and 2

17 are copies of documents produced by the

18 Respondent. Ms. Wisniewski testified that they

19 truly --

20 HEARING OFFICER HALLORAN: I'm sorry.

21 Back up.

22 MR. WEINTRAUB: Exhibits 1 and 2 are

23 copies of documents produced by the Respondents.

24 Ms. Wisniewski testified that they

28

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1 truly and accurately depicted the property at

2 issue. That's sufficient foundation.

3 HEARING OFFICER HALLORAN: 4A and 4B.

4 MR. WEINTRAUB: Again, Ms. Wisniewski

5 testified that these were accurate photos of the

6 building which formerly existed at the site. I

7 don't know what further foundation she wishes.

8 HEARING OFFICER HALLORAN Ms. Pohn.

9 MS. POHN: Again, I state my objection

10 for the record that foundation has not been

11 properly laid.

12 HEARING OFFICER HALLORAN: I am going

13 to have to overrule the objection. I find there
14 has been sufficient foundation. . .But I find it
15 sufficient and we'll allow it in.

16 Thank you.

17 MR. WEINTRAUB: For the record,
18 Petitioner's Exhibits 1 through 10 are admitted?

19 HEARING OFFICER HALLORAN: Yes.

20 Exhibits 1 through 10, with Exhibit 4 being 4A
21 and 4B, is admitted into evidence.

22 (Petitioner's Exhibits Nos. 1 - 10 were
23 admitted.)

24

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1 CROSS-EXAMINATION

2 BY MS. POHN:

3 Q. Ms. Wisniewski is that --

4 A. Wisniewski.

5 Q. Okay. I apologize.

6 How long have you worked for Mr.
7 Christapolous?

8 A. Without a break in service?

9 Q. Overall.

10 A. Overall almost 20 years.

11 Q. And you mentioned a break in service,

12 that was?

13 A. For about 7 and a half years, my family
14 and I lived in Europe. I actually worked in the
15 summers a little bit.

16 Q. And about when was that 7 and a half
17 years?

18 A. We left in 1989, and returned in '94.
19 And I started, again, in '96, full-time or three
20 days a week I should say.

21 Q. So, then you started working in
22 approximately '82?

23 A. I'm trying --

24 Q. Would the early '80s be a fair

30

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1 statement?

2 A. Yes.

3 Q. Before filing these applications with
4 the state fire marshal for the first five
5 tanks --

6 A. Okay.

7 Q. -- did you have any experience with
8 underground storage tanks?

9 A. No, I did not.

10 Q. Did you have any knowledge or any
11 reason to have knowledge of the act or the

12 regulations regarding underground storage tanks
13 at that time?

14 A. Other than the documentation provided
15 by the state, no.

16 Q. Okay. Petitioner's Exhibit No. 3 is a
17 plat of survey map attached by the Petitioner to
18 their supplement to the petition for review.

19 I'm handing her a pen, can you draw
20 approximately on there where the first five
21 tanks were located prior to removal?

22 A. Approximately right in this area over
23 here.

24 Q. And can you as well draw on there

31

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1 approximately where the sixth UST was prior to
2 removal?

3 A. Approximately here.

4 Q. Okay. This plat map is divided into
5 lots, is that correct?

6 A. Correct.

7 Q. Okay. Can you tell me the width in
8 feet of each lot?

9 A. Estimate would be 26 feet I guess.

10 Q. I believe it is written right -- I'm

11 sorry.

12 A. 25.

13 MR. WEINTRAUB: We'll stipulate.

14 THE WITNESS: Some are 25 and the end
15 ones are larger.

16 BY MS. POHN:

17 Q. Okay. Can you tell me from the two
18 areas that you drew, the closest edge between
19 the two, the shortest distance is approximately
20 how many feet?

21 A. Approximately 100 feet.

22 Q. Okay. Are you familiar with the
23 definitions in the pollution control board
24 regulations for underground storage tanks?

32

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1 A. Not really.

2 Q. Okay. Had you heard the term tank
3 field before?

4 A. I may have but not with any specific
5 definition.

6 Q. Okay. I'm handing the witness Part 732
7 from the pollution control board regulations,
8 which is the -- I'm sorry, Part 732.103, which
9 is the definitions. There is a highlighted
10 definition. Can you read that for the record?

11 A. "Tank field means all underground
12 storage tanks at a site that reside within a
13 circle of 100 foot radius."

14 Q. Okay. Thank you.

15 Are you familiar with -- strike that.

16 Petitioner's Exhibit No. 8, which I'm
17 handing to you, the last page is the UST
18 information sheet.

19 Did you provide the information on that
20 sheet?

21 A. I think at the time the American Tank,
22 which was the environmental company that was
23 working with us, I think completed this.

24 Q. Okay.

33

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1 A. Based on the information that they had
2 for the tanks that they pulled -- the tank that
3 they pulled in the prior. . .

4 Q. Which tank did they pull?

5 A. They pulled number -- the 3,000 heating
6 oil tank pulled in October of 2000.

7 Q. And is that the tank we've been
8 referring to as the sixth tank?

9 A. Yes, it is.

10 Q. And can you tell me does that tank have
11 an IEMA number?

12 A. Yes, it does.

13 Q. Can you tell me what that IEMA number
14 is?

15 A. 2,000 1989.

16 Q. Okay. The first five tanks that were
17 removed from the 3350 property, do those have
18 IEMA numbers as well?

19 A. Yes, they do.

20 Q. All of them or only some of them?

21 A. Only the ones that -- the first 3.

22 Q. Okay. And can you tell me what -- do
23 they all have the same IEMA number?

24 A. Yes.

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1 Q. What is that?

2 A. 990882.

3 Q. Can you tell me your understanding of
4 why there are different IEMA numbers for those
5 three tanks and for the sixth tank?

6 A. My understanding?

7 MR. WEINTRAUB: I'm going to object.
8 It calls for a conclusion as to someone's else
9 action and state of mind.

10 MS. POHN: I'm asking for her
11 understanding, not someone else's.

12 HEARING OFFICER HALLORAN: She may
13 answer, if she is able. Objection overruled.

14 THE WITNESS: No, I don't -- I don't
15 know why they have different ones, when it was
16 on the same property, no.

17 BY MS. POHN:

18 Q. Okay. Can you tell me for the three of
19 the five tanks from the first group that were
20 removed that have the IEMA numbers, can you tell
21 me what the date of the occurrence was, the date
22 of the release?

23 A. I believe it was 4/12, which was also
24 the same date that it was pulled. And as I said

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1 in that other document, I believe this is a typo
2 for date removed.

3 Q. What year was that?

4 A. 1999.

5 Q. Okay. And that is for the three of the
6 five from the first group?

7 A. Correct.

8 Q. Can you tell me again what the

9 occurrence or release date was for the sixth
10 tank?

11 A. 10/16 of 2000.

12 Q. So, it's your testimony the first
13 release date was April 12th, 1999, and the --
14 for the sixth tank the release date was October
15 16th, 2000?

16 A. Correct.

17 Q. Can you tell me approximately how much
18 time there is between those two days?

19 A. Approximately 18 months.

20 Q. Can you tell me when MAC Investments
21 purchased the property at 3350?

22 A. I don't know the exact date.

23 Q. Do you know the approximate year?

24 A. I actually don't. I actually don't

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1 know the exact date.

2 Q. Was it in the '80s?

3 A. It was in the '80s. I just don't know
4 when Olympic Oldsmobile, MAC Investments as
5 Michael Chris Chris, which owned Olympic Olds,
6 so I'm not sure exactly when the release -- the
7 date of the signature on the release but it
8 would be I think in the early --

9 Q. Was it prior to when you began work?
10 A. Yes.
11 Q. Okay. And it was your testimony
12 earlier that all of these tanks existed on the
13 property when MAC Investments, Olympic
14 Oldsmobile, Michael Chris Chris came to be the
15 owners of them?
16 A. Correct.
17 Q. And can you tell me when MAC
18 Investments submitted their notification for
19 change in ownership of the underground storage
20 tanks?
21 A. I'm not sure I understand your
22 question.
23 Q. Okay. When MAC Investments purchased
24 the property --

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1 A. Okay.
2 Q. -- they purchased the tanks with the
3 property, would that be fair to say?
4 A. I don't think they knew the tanks were
5 on the property but, yes, the tanks were there.
6 Q. Okay. So, when they purchased the
7 property, they purchased everything with it?

8 A. Correct.

9 Q. They would, therefore, be the owners of
10 the tanks?

11 A. If we had known they were there, yes.

12 Q. Therefore, a requirement under law
13 would be a notification of change in ownership
14 as the new owners?

15 MR. WEINTRAUB: I'm going to object to
16 this line of questioning, is not relevant to any
17 issue in this proceeding which deals only with
18 the issue of whether there should be one or two
19 deductibles.

20 HEARING OFFICER HALLORAN: Ms. Pohn.

21 MS. POHN: I -- in all their exhibits
22 they discuss -- I'm sorry -- registration dates
23 and everything else. I'm trying to find out her
24 information and knowledge about these dates

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1 because they do come into effect.

2 MR. WEINTRAUB: They come into effect
3 how? It's not the issue in this lawsuit.

4 HEARING OFFICER HALLORAN: Ms. Pohn.

5 MS. POHN: Because under the act,
6 registration dates and when tanks were
7 registered is a factor for determining the

8 deductible under the fund.

9 MR. WEINTRAUB: But the department has
10 already determined the deductible based on the
11 information as to dates of registration and the
12 only issue is one or two deductibles. If
13 they're now saying they want to go back and
14 rethink or redo their determinations, that is
15 not what we're here to have a hearing on.

16 MS. POHN: We're here to defend our
17 determination under the deductible, therefore,
18 I'm trying to elicit testimony that supports our
19 determination of the deductible.

20 HEARING OFFICER HALLORAN: Mr.
21 Weintraub, I'm going to overrule your objection
22 but, Ms. Pohn, if you could wrap it up in a
23 relatively short period of time.

24 MS. POHN: Certainly.

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1 BY MS. POHN:

2 Q. Is it your testimony then that you're
3 not sure when or if a change in notification
4 form was filed -- I'm sorry, a change of
5 ownership form?

6 A. I don't know if and when it was filed,

7 no, I do not.

8 Q. Thank you.

9 Just a moment.

10 You testified earlier that the removal
11 of the tanks and the demolition of the building
12 was one continuous project, is that correct?

13 A. Correct.

14 Q. And when did that project begin?

15 A. Which portion of the project?

16 Q. Well, if it was a continuous project
17 the beginning of the project to the end of
18 project is what I'm trying to find out.

19 A. Well, the tanks were removed, the first
20 five tanks were removed in April of '99 and the
21 building was demolished in October of 2000.

22 Q. And were those the only portions of the
23 project? Were there any -- were you, were you
24 doing any other work at the site?

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1 A. What do you mean any other work? The
2 building was still operational, I mean, we were
3 selling cars.

4 Q. It was your testimony that MAC
5 Investments was unaware the tanks existed when
6 they purchased the property, is that correct?

7 A. I was not involved in the purchase of
8 the property, so whether or not MAC Investments
9 was aware or unaware I cannot answer that.

10 MS. POHN: Nothing further.

11 HEARING OFFICER HALLORAN: Thank you,
12 Ms. Pohn.

13 Mr. Weintraub, any redirect?

14 MR. WEINTRAUB: May I see that exhibit
15 that you marked?

16 MS. POHN: Yes.

17 REDIRECT EXAMINATION

18 BY MR. WEINTRAUB:

19 Q. Ms. Wisniewski, Ms. Pohn had you draw
20 some circles on Exhibit 3, the survey, setting
21 forth your understanding of the approximate
22 locations of the first five tanks and the sixth
23 tank, which were discovered on the property. Is
24 that correct?

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1 A. Correct.

2 Q. Those are just approximates, is that
3 correct?

4 A. Correct. I didn't pull the tanks.

5 Q. Okay. And you never drew any kind of a

6 circle or radius around the first tanks to try
7 to define a field or anything like that?

8 A. No, I did not.

9 Q. Nor with respect to the sixth tank?

10 A. No.

11 Q. Ms. Pohn asked you some questions as
12 well about the UST information sheet, which is
13 the last page of Exhibit 8. You testified about
14 release dates. Is it your understanding that
15 the date removed column there is the same as
16 release date?

17 A. That is my understanding, yes.

18 MR. WEINTRAUB: Okay. I have no other
19 questions.

20 HEARING OFFICER HALLORAN: Thank you,
21 Mr. Weintraub.

22 Ms. Pohn, any recross?

23 MS. POHN: One minute.

24 (Off the record.)

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1 MS. POHN: No, no recross, but I would
2 like to ask that the exhibit that the witness
3 drew on be entered as part of the record.

4 MR. WEINTRAUB: I have no objection to
5 that with the understanding that they're simply

6 approximate location.

7 MS. POHN: That was her testimony.

8 Thank you.

9 HEARING OFFICER HALLORAN: All right.

10 Petitioner's Exhibit 3, the copy she had while
11 she was on the stand, she circled it, so what
12 we'll do and by agreement we'll enter
13 Petitioner's Exhibit No. 3 with the circles
14 drawn by the witness into evidence and you want
15 to withdraw the original Petitioner's Exhibit 3?

16 MR. WEINTRAUB: That's fine.

17 HEARING OFFICER HALLORAN: The new
18 Petitioner's Exhibit No. 3 is admitted into
19 evidence.

20 (Petitioner's Exhibit No. 3 was
21 admitted.)

22 HEARING OFFICER HALLORAN: Okay. No
23 recross.

24 You may step down, ma'am. Thank you

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1 very much.

2 My understanding that concludes Mr.
3 Weintraub's case in chief.

4 MR. WEINTRAUB: Yes, sir, it does.

5 HEARING OFFICER HALLORAN: Let's go
6 off the record for a second.

7 (Off the record.)

8 HEARING OFFICER HALLORAN: We're back
9 on the record. It's approximately 10:10 and I
10 believe Mr. Weintraub has finished with his case
11 in chief. Ms. Pohn is going to be calling her
12 first witness.

13 MS. POHN: Mr. Nessler.

14 (Whereupon the witness was first
15 sworn.)

16 BERNARD NESSLER,
17 called as the witness herein, having been first
18 duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MS. POHN:

22 Q. Mr. Nessler, please, state your full
23 named and spell it.

24 A. Yes. Bernard Charles Nessler.

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1 N-E-S-S-L-E-R.

2 Q. Are you currently employed?

3 A. Yes, I am.

4 Q. By whom?

5 A. City of Chicago, department of
6 environment.

7 Q. And how long have you been employed by
8 the department of environment?

9 A. I was hired June 1st, 1995, so 7 years
10 in approximately 2 months.

11 Q. And what is your current job title?

12 A. Senior environmental inspector.

13 Q. And how long have you had that title?

14 A. I believe I was upgraded in 1998.

15 Q. Okay. What was your title previously?

16 A. It was senior inspector and before that
17 it was environmental technician when I was
18 hired.

19 Q. Okay. Do you have a college degree?

20 A. Yes, I do.

21 Q. And where is that from?

22 A. Northeastern Illinois University.

23 Q. And what is your degree in?

24 A. Environmental studies, geography. It's

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1 a BA. I received it in 1983.

2 Q. Have you had any type of training
3 related to your job since college?

4 A. Yes, I have.

5 Q. And would you describe that briefly?

6 A. You want me to list the type of
7 certifications I have?

8 Q. Yes, please.

9 A. I have 40 hour OSHA training, which is
10 required. I have incident command training by
11 the fire department, emergency response training
12 by the fire department, NAS training, which is
13 corrosion protection training, that was given to
14 me at -- by Nicor. And I think one thing I
15 forgot to mention to you before I also was
16 trained by U.S. EPA Region 5 in aquatic
17 protection and environmental soil.

18 Q. You testified you're currently a senior
19 environmental inspector?

20 A. Yes.

21 Q. What are your responsibilities and
22 duties in that position?

23 A. My duties vary. There is many
24 different job titles, things we do during a day,

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1 but briefly my main responsibilities are doing
2 oversiting, tank removal, abandonments,
3 installation, repairs, upgrades. We also do

4 citizen complaints, above ground removal and
5 installs, certification audits for the fire
6 marshal's office, which is where we go out and
7 inspect gas stations, make sure their system is
8 within the 1998 compliance standard.

9 Q. Okay. Are you familiar with the
10 property located at 3350 North Cicero?

11 A. Yes, I am.

12 Q. Do you know who the owners of that
13 property are?

14 A. Oldsmobile, yes.

15 Q. Okay. Do you know who operates on that
16 site?

17 A. Currently, I think it is still a sales
18 lot.

19 Q. Okay. How did you become familiar with
20 the property at 3350 North Cicero?

21 A. I had a removal assignment given to me
22 on April 12th of 1999 to go out and to supervise
23 the removal of I believe there might have been
24 three permitted tanks on that application and I

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1 think we found a couple extra at the time.

2 Q. Okay. So, it would have been -- who

3 gave you this assignment?

4 A. Oh, my -- well, the city, my job,
5 supervisor.

6 Q. Okay. How many times have you visited
7 the property at 3350 North Cicero?

8 A. To the best of my recollection, four
9 times.

10 Q. Do you recall the dates of those
11 visits?

12 A. April 12, 1999, October 16th, 2000, I
13 believe January 19th of 2001, and then when me
14 and Charles went out I believe that was June of
15 2001.

16 Q. Okay. Are you aware that underground
17 storage tanks have been removed from 3350 North
18 Cicero?

19 A. Yes.

20 Q. Were you present when they were
21 removed?

22 A. Yes.

23 Q. Was the soil disturbed during the
24 removal?

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1 A. It was excavated you mean?

2 Q. Yes.

3 A. Yes.

4 Q. And was there backfill or a pile of
5 soil where they had been removed?

6 A. There was an excavation pit. There was
7 backfill material, yes.

8 Q. Okay. During the removal, were you
9 physically present on the site or were you --

10 A. Yes.

11 Q. -- off the site?

12 A. Yes, I was on the site.

13 Q. So you know exactly where the tanks
14 were removed from?

15 A. I know approximately where they were
16 removed from, yes.

17 Q. Okay. I've got Respondent's Exhibit A,
18 which is the same as Petitioner's Exhibit 3, I
19 believe. So I have them marked with an R.
20 They're the same exhibit.

21 HEARING OFFICER HALLORAN: Ms. Pohn,
22 this will be Respondent's Exhibit No. 1?

23 MS. POHN: I have them marked with an

24 A. I don't know if you prefer numbers.

2 little more consistent, I think we got
3 Petitioner's in numerical.

4 MS. POHN: Okay.

5 HEARING OFFICER HALLORAN: Proceed.
6 Thank you.

7 BY MS. POHN:

8 Q. Can you tell me what this exhibit is?

9 A. Yes. I believe it is a diagram of the
10 Oldsmobile showroom on that 3350 lot area on
11 North Cicero.

12 Q. Okay. Based on your knowledge and
13 experience with the site, is this accurate?

14 A. Honestly, the building looks larger
15 than I actually saw it to be. I didn't believe
16 the building extended this far to Henderson as
17 they had drawn but that I wasn't really on that
18 side of the building so I couldn't swear to
19 that.

20 Q. Are the sizes and the feet and the
21 dimensions of the lot as a whole are those
22 accurate, to your knowledge?

23 A. I believe when I did a tape measure of
24 the lot, my tape measure came out to more around

1 230 feet or so, I think it said 266 total so I

2 guess it is fairly accurate.

3 Q. Okay. I'm going to hand you a pen, on
4 this map, could you mark the approximate area
5 that you witnessed the first five USTs being
6 removed from?

7 A. Sure.

8 Q. Okay. And could you as well mark the
9 area that the final and sixth UST was removed
10 from? Well, actually, I'm sorry -- can you tell
11 me the approximate distance between the two?

12 A. Without taping it, I paced it off 120
13 feet.

14 Q. Okay. According to this plat?

15 A. Oh, according to the plat, according to
16 this, about 135 feet.

17 Q. Okay. Can I have the pen?

18 Thank you.

19 You said you paced it off. Does that
20 mean that you measured the distance between the
21 first removal and the second removal?

22 A. Yes.

23 Q. And why would you have measured that?

24 A. I was told to go back out to the site

1 by my supervisor to pace off or measure off the
2 best I could. On my first inspection out there,
3 to tape off the distance, pace off the distance
4 between the first original excavation tank field
5 and then the new tank field area and I paced off
6 over 120 feet in the back alley.

7 Q. Can you tell me what this exhibit is?

8 A. Yes. It's showing the lot at 3350
9 North Cicero.

10 Q. Okay. Is this your inspection report?

11 A. That is correct.

12 Q. Do you have personal knowledge of this
13 report?

14 A. That -- yes, I made it.

15 Q. Can you tell me generally where it is
16 kept?

17 A. We keep folders of all of our UST data
18 in our office on the 25th floor at 30 North
19 LaSalle.

20 Q. Is this an accurate copy of the
21 document kept in that file?

22 A. Yes.

23 Q. And how do you know that?

24 A. I believe I made a photocopy of it.

1 Q. Okay. So, you personally took the
2 document from the file?

3 A. Yes.

4 Q. This was the MAC Investments file?

5 A. Yes.

6 Q. There is a photograph in this report,
7 is that correct?

8 A. Yes.

9 Q. Did you take the photograph?

10 A. Yes, I did.

11 Q. Was that during the normal course of
12 your inspection?

13 A. Yes, it was the same day.

14 Q. Can you tell me generally what the
15 photograph is of?

16 A. The photograph is taken, I believe,
17 through a fence opening from Henderson Street
18 looking up towards a backhoe that was on the
19 property where they were digging still first
20 excavation.

21 Q. Okay. Is this photograph an accurate
22 representation of the property at 3350 North
23 Cicero?

24 A. Yes, it is.

1 MS. POHN: I'm going to ask that
2 Respondent's Exhibit 2 be admitted into
3 evidence.

4 HEARING OFFICER HALLORAN: Mr.
5 Weintraub?

6 MR. WEINTRAUB: I have no objection.

7 HEARING OFFICER HALLORAN: Respondent's
8 2 is admitted into evidence.

9 (Respondent's Exhibit No. 2 was
10 admitted.)

11 BY MS. POHN:

12 Q. Does this inspection report reflect the
13 first time that you measured the distance
14 between the two removals?

15 A. I believe it was the first time I did
16 it, yes.

17 Q. Okay. And can you tell me how you
18 measured it this time?

19 A. Well, I was in the alley, alleyway, and
20 I paced off the distance, I walked it, I walked
21 it and paced it off.

22 Q. And can you tell me what your
23 conclusion was regarding the distance between
24 the two removals?

1 A. My conclusion was there was clearly 120
2 feet plus distance between the first group of
3 tanks removed and the second tank, the number 6
4 tank that was removed later.

5 Q. Okay. And did you measure the shortest
6 distance between the two tanks?

7 A. Yes.

8 Q. Okay. Is there also a narrative that
9 goes with this?

10 A. Yes, there is.

11 Q. Okay. Could you, please, read me the
12 last four lines of that starting with the word
13 both?

14 A. "Both excavations were given different
15 IEMA numbers and appear to be around 120 feet
16 apart. This number was reached by pacing off
17 the distance in the rear alleyway. See attached
18 drawing for details."

19 Q. Okay. Have you paced off distances in
20 your job before?

21 A. Yes, I have.

22 Q. Have you generally found those to be
23 accurate?

24 A. Believe it or not, yes, I have.

1 Q. Handing you Respondent's Exhibit 3.

2 A. Okay.

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. And can you tell me generally what it
6 is?

7 A. This was the second time I was told to
8 go out to the 3350 North Cicero site by my
9 supervisor and the state fire marshal's office
10 in Springfield.

11 Q. Okay. So, you have personal knowledge
12 of this document?

13 A. Yes, I do.

14 Q. Where was it kept?

15 A. It was kept in the department
16 environmental folders on the 25th floor in my
17 office.

18 Q. Okay. And is this an accurate copy of
19 that document kept in that file?

20 A. Yes, it is.

21 Q. And you know that because you
22 personally copied it?

23 A. Yes, I have. Yes, I did.

24 MS. POHN: I ask that Respondent's 3 be

1 entered into evidence.

2 HEARING OFFICER HALLORAN: Mr.
3 Weintraub.

4 MR. WEINTRAUB: No objection.

5 HEARING OFFICER HALLORAN: Respondent's
6 Exhibit No. 3 is admitted.

7 (Respondent's Exhibit No. 3 were
8 admitted.)

9 BY MS. POHN:

10 Q. How did you measure the distance
11 between the tanks the second time?

12 A. Myself and inspector Southern was out
13 there and we tape measured the distance.

14 Q. Okay. What was the distance that you
15 came up with the second time?

16 A. The distance we came up with between
17 the nearest point, as you would say, was 133
18 feet.

19 Q. Could you read the marked portion on
20 the front of your inspection report?

21 A. Sure.

22 "This distance was 133 feet, which
23 would indicate a new incident number was needed,
24 and a deductible was given for a new location."

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1 Q. Okay. Thank you.

2 Why does the distance between these two
3 removals matter?

4 MR. WEINTRAUB: Objection, calls for
5 legal conclusion.

6 HEARING OFFICER HALLORAN: I'm sorry.

7 (Record read.)

8 HEARING OFFICER HALLORAN: He may
9 answer if he is able. Overruled.

10 THE WITNESS: Based on my experience as
11 a tank inspector, any tank that was removed from
12 a new tank field would need a new IEMA number.

13 BY MS. POHN:

14 Q. Okay. Are you familiar with the
15 definition of a tank field?

16 A. As it's written, yes.

17 Q. Okay. And could you tell me generally
18 what that definition is?

19 A. That any tank lying within a radius of
20 100 feet would be considered part of the
21 original tank field.

22 Q. In general, when there is a release
23 from an underground storage tank, who would be
24 notified?

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1 A. The incident number would be reported
2 to the fire marshal's 1-800 number.

3 Q. Okay.

4 A. It's the responsibility of the agent or
5 the owner to report any release from an
6 underground storage tank, when they -- when
7 they're at the site.

8 Q. Okay.

9 A. And within 24 hours.

10 Q. Would the Illinois Emergency Management
11 Agency be notified?

12 A. Yes.

13 Q. Okay. When the Emergency Management
14 Agency is notified of a release, is the date
15 that they're notified considered the date of the
16 occurrence?

17 A. Generally, it is, but there has been
18 examples where people have done soil borings and
19 had previous releases and we would find that --
20 if it was considered the same release source, we
21 would consider those borings as part of the
22 release. So, it doesn't have to be the same
23 date per se. They could have done borings
24 earlier and still could have given them the same

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1 release.

2 Q. Do you know if borings were done at
3 this particular --

4 A. I do not.

5 MR. WEINTRAUB: I object. Withdraw it.

6 HEARING OFFICER HALLORAN: Read back
7 the question.

8 (Record read.)

9 BY MS. POHN:

10 Q. So, with this current property, you're
11 not aware if soil borings were done --

12 MR. WEINTRAUB: Object, not relevant
13 to any issue in this proceeding.

14 MS. POHN: I'm not finished with the
15 question, Mr. Weintraub.

16 HEARING OFFICER HALLORAN: Ms. Pohn,
17 finish the question, then if you feel so fit,
18 Mr. Weintraub, you can object. Thank you.

19 BY MS. POHN:

20 Q. You testified you were not aware if any
21 soil borings were done at this property. So,
22 for the sake of this property, would the release
23 date, the occurrence date be the same as the
24 date that they notified Illinois Emergency

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1 Management Agency?

2 MR. WEINTRAUB: Object, irrelevant,
3 does not tend to prove or disprove any issue in
4 this proceeding, which relates only to whether
5 one or two deductibles ought to be charged.

6 MS. POHN: The deductibles are charged
7 annually based on the date of occurrence. I'm
8 trying to get the proper date of occurrence as
9 being the date that they notified Illinois
10 Emergency Management Agency for the purposes of
11 assessing a deductible that we're here to
12 defend.

13 HEARING OFFICER HALLORAN: Is that
14 correct, Mr. Weintraub?

15 MR. WEINTRAUB: Is what correct?

16 HEARING OFFICER HALLORAN: What she
17 just explained?

18 MR. WEINTRAUB: We disagree.

19 MS. POHN: You disagree that it applies
20 annually?

21 MR. WEINTRAUB: That's a legal issue.
22 The statute says what the statute says.

23 MS. POHN: That's my question.

24 HEARING OFFICER HALLORAN: I'm going to

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1 overrule your objection. He may answer if he is
2 able. I find it relevant. I find people with
3 sensible minds would rely on it, so you may
4 proceed.

5 THE WITNESS: Yes, it would be the date
6 of the removal.

7 BY MS. POHN:

8 Q. Thank you.

9 Do you know the date that the first
10 five tanks were removed from 3350 North Cicero?

11 A. Yes. April 12, 1999.

12 Q. Do you know the date that Illinois
13 Emergency Management Agency was notified about
14 the release from the property?

15 A. It should have been within 24 hours of
16 that date, according to the law.

17 Q. Do you know the date that the sixth UST
18 was removed from 3350 North Cicero?

19 A. Yes. October 16th, 2000.

20 Q. And do you know the date that Illinois
21 Emergency Management was notified about the
22 release of that property?

23 A. Yes, that was done the same day I was
24 given the IEMA number by American Tank

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1 approximately an hour after removal occurred.

2 Q. Are those days separate occurrences?

3 A. Yes.

4 Q. Can you tell me how much time there was
5 between these two occurrences?

6 A. I believe I stated before it was 18
7 months.

8 Q. At the 3350 North Cicero property, the
9 second occurrence you testified was October
10 16th, 2000?

11 A. Yes.

12 Q. Was that occurrence part of the ongoing
13 corrective action related to the first
14 occurrence that you testified was April 12,
15 1999?

16 A. To the best of my knowledge, I do not
17 know their remediation plans.

18 Q. Do you know if the two occurrences were
19 related?

20 A. They were separate occurrences.

21 Q. Okay. You testified when the tanks
22 were removed they were excavated and that the
23 yard was then backfilled with soil, is that

24 correct?

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1 A. The area was, I believe, being
2 remediated and backfilled.

3 Q. When it was backfilled with soil, was
4 that backfill placed directly over where the
5 tanks were excavated from?

6 A. Yes.

7 Q. And was that visible?

8 A. Yes.

9 Q. You testified that you were at the
10 property for the first removal in April of '99?

11 A. That is correct.

12 Q. And is it your understanding a release
13 was discovered during that excavation?

14 A. Yes.

15 HEARING OFFICER HALLORAN: Thank you,

16 Ms. Pohn.

17 Cross?

18 MR. WEINTRAUB: Thank you.

19 CROSS-EXAMINATION

20 BY MR. WEINTRAUB:

21 Q. You testified, Mr. Nessler, in your
22 view that there were two separate occurrences 18
23 months apart, is that correct?

24 A. In terms of occurrences, you mean

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1 releases?

2 Q. Well, let me ask you this question.

3 How do you define occurrence?

4 A. I'm asking you. I don't know.

5 Q. Is there a definition of occurrence

6 that you're aware of?

7 A. I would understand the word occurrence

8 to mean release from a tank.

9 Q. Okay. And is the date of release the
10 same date as the date of excavation?

11 A. In this case, both were, yes.

12 Q. Would that always be the case?

13 A. As I stated, if you did soil borings,

14 prove that there was a release prior to the

15 removal date, you could have a number given

16 earlier to the removal date.

17 Q. Let's go back to your inspection of the

18 site on January 19th of the year 2001, you were

19 there by yourself, is that correct?

20 A. That is correct.

21 Q. And by that date, all six of the tanks

22 had been removed, is that correct?

23 A. That would be correct.

24 Q. And on this date, you did not have

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1 physical access to the site itself, is that
2 correct?

3 A. I was told by my supervisor not to
4 access the actual property but to do my
5 investigation from the outer perimeter of the
6 site.

7 Q. So, you didn't go on the site?

8 A. That is correct.

9 Q. And you didn't have any tape measure or
10 other measuring equipment with you, is that
11 correct?

12 A. I did have a tape measure but it was
13 difficult to operate on my own so pacing would
14 be more simple and accurate.

15 Q. And the ground was snow covered on that
16 date, is that correct?

17 A. Partly, yes.

18 Q. Okay. You were in the alley when you
19 made your estimates of distances, is that
20 correct?

21 A. That is correct, sir.

22 Q. Approximately, how many feet away from

23 the -- were you from the location where the
24 first five tanks had been removed?

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1 A. Approximately 40 feet from the edge of
2 the excavation.

3 Q. Okay. That is an estimate you based on
4 what?

5 A. I based on what I would view an outline
6 of what the former building used to look like
7 and where the excavation pit was somewhat filled
8 back in.

9 Q. Were those tanks under the actual
10 building itself?

11 A. The tanks, to the best of my knowledge,
12 the tanks were partly -- they were against the
13 wall of the building, but they were in front of
14 the building sort of.

15 Q. Okay. Did you make any effort to draw
16 a circle or radius around what you've called the
17 tank field that contained the five tanks?

18 A. I drew a circle to where I believe it
19 represented the tank field itself.

20 Q. Well, looking at Respondent's Exhibit
21 2, do you have that in front of you?

22 A. Yes. The 1/19/01.

23 Q. Yes.

24 A. Yes.

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1 Q. Is the circle the one you're referring
2 to at the top next to the word backhoe?

3 A. Yes, where I marked with Xs, yes.

4 Q. That looks more like an oval to me.

5 A. Well, semantics, but, yes.

6 Q. Did you make any kind of a measurement
7 as to the exact outer boundary of each of the
8 spots where those tanks were located and then
9 draw a radius around that area?

10 A. The outer markings, which is the first
11 excavation, the southern most marking would be
12 the end of what I viewed as the radiused area
13 around the southern most tank. The top Xs would
14 be the radius, the northern most radius of the
15 second area.

16 Q. Did you draw any circle around the
17 location of those tanks, an exact geometric
18 circle?

19 A. This is not an exact map, sir.

20 Q. Okay. Same with respect to tank 6, did
21 you draw a circle around that tank?

22 A. Again, this is not an exact drawing,
23 sir.

24 Q. Did you make any measurement from the

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1 nearest point of two circles which would have
2 been drawn around the first five tanks and the
3 sixth tank?

4 A. As I stated, I believe the distance of
5 120 feet would be the distance between the two
6 tank radiuses.

7 Q. But you didn't draw circles around what
8 you called these tank fields?

9 A. In terms of circles, in terms of actual
10 distancing?

11 Q. Exact geometric circles around these
12 groups or single tank?

13 A. If I drew a circle, it probably would,
14 if anything, increase the distance, not decrease
15 it.

16 Q. You didn't do that, did you?

17 A. No, I did not.

18 Q. Now, you said that you were present
19 with inspector Southern on June 7th, is that
20 correct?

21 A. Yes.
22 Q. This time you brought a tape measure
23 with, again, June 7, 2001. All of the tanks had
24 now been gone for quite awhile?

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1 A. That would be correct.
2 Q. What was the condition of the property
3 at that time, was it leveled and graveled?
4 A. To the best of my knowledge, it was
5 fairly excavated out, yes.
6 Q. Okay. So then the area where you
7 marked tank area X number 1 toward the top --
8 A. Uh-huh.
9 Q. -- that is based on your recollection
10 of where the tanks were?
11 A. That would be correct.
12 Q. And the same with respect to what we've
13 called the sixth tank toward the bottom, again,
14 that is based on recollection?
15 A. Well, not only recollection, but you
16 could see where the excavation pits were, where
17 the tanks were dug out, so, it wasn't just
18 recollection, it was actual physical evidence
19 stating that that was where the areas were.
20 Q. Could you tell the exact point at which

21 the boundaries of the tanks were located?

22 A. I could tell where the excavation pit
23 ended on both locations, on both sites.

24 Q. And did you draw any geometric circle

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1 around the area that contained tanks 1 and 5?

2 A. I drew a box area in a circle to where
3 the tanks were located.

4 Q. That -- again, that is --

5 A. Again, stating the fact that the
6 farthest point of a radius of that tank field
7 would be the area -- I measured the area out to
8 where the furthest most tank excavation wall on
9 the north one would be, and the furthest most
10 point of the excavation wall on the southern one
11 was. So, I was given -- I was taking the points
12 from the farthest -- the farthest points from
13 the excavation walls. So, if that's the tank
14 radius area, if the excavation pit, the extreme
15 wall would be considered the farthest most
16 radius of that excavation.

17 Q. You didn't draw a circle around the
18 boundaries of the first five tanks, correct?

19 MS. POHN: Objection, asked and

20 answered.

21 HEARING OFFICER HALLORAN: He has asked
22 it but the witness hasn't really answered it
23 yet.

24 THE WITNESS: Yes, I need some

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1 clarification what he exactly wants.

2 HEARING OFFICER HALLORAN: Ms. Pohn can
3 rehabilitate you or ask on redirect, but I think
4 the question is straightforward. I would direct
5 you to answer.

6 THE WITNESS: Okay. The southern most
7 point of the first excavation, to my knowledge,
8 is the farthest tip of that first tank radius.

9 BY MR. WEINTRAUB:

10 Q. My question was, you did not draw a
11 circle around the outer boundaries of the first
12 five tanks, did you?

13 MS. POHN: Can we go off the record for
14 one second?

15 HEARING OFFICER HALLORAN: Off the
16 record.

17 (Off the record.)

18 HEARING OFFICER HALLORAN: Back on.

19 Mr. Weintraub is going to ask the

20 question one more time.

21 BY MR. WEINTRAUB:

22 Q. Yes. Mr. Nessler, did you draw a
23 geometric circle around the boundaries of the
24 five tanks?

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1 A. No.

2 Q. Did you draw a geometric circle around
3 the boundary of the -- around the boundaries of
4 the sixth tank?

5 A. No.

6 Q. Your measurement of 133 feet appears to
7 go on a straight line north to south, correct?

8 A. Yes.

9 Q. You did not make any measurement
10 diagonally from a circle around the first five
11 tanks to a circle around the sixth tank, did
12 you?

13 A. I was never told to do so.

14 MR. WEINTRAUB: Thank you.

15 I have no other questions.

16 HEARING OFFICER HALLORAN: Thank you.

17 Ms. Pohn, any redirect?

18 MS. POHN: Just briefly.

19

REDIRECT EXAMINATION

20 BY MS. POHN:

21 Q. Did you measure the distance between
22 these two removals?

23 A. Yes.

24 Q. What was the distance between the two

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1 removals?

2 A. Between the first excavation pit wall
3 most southern wall, and the second excavation
4 pit most northern wall was 133 feet.

5 Q. Is that the shortest distance between
6 those two removal sites excavation areas?

7 A. Yes. The distance would increase if we
8 counted distance going east.

9 MS. POHN: Nothing further.

10 HEARING OFFICER HALLORAN: Thank you,
11 Ms. Pohn.

12 Any recross?

13 MR. WEINTRAUB: No.

14 HEARING OFFICER HALLORAN: All right.
15 You may step down. I'm sorry.

16 MS. POHN: I would like to move that
17 Respondent's 1 with Mr. Nessler's drawings be
18 entered as an exhibit.

19 MR. WEINTRAUB: No objection.

20 HEARING OFFICER HALLORAN: Respondent's
21 Exhibit No. 1 will be admitted.

22 (Respondent's Exhibit No. 3 was
23 admitted.)

24 (Off the record.)

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1 HEARING OFFICER HALLORAN: We're back
2 on record. It's approximately 12:50.

3 By my calculations the Petitioner has
4 finished his case in chief. The Respondent's
5 has began theirs and they've already called one
6 witness and I believe they have two more.

7 Ms. Pohn.

8 MS. POHN: Yes.

9 MR. STERNSTEIN: Mr. Hearing Officer,
10 I'll be doing the direct examination for Mr.
11 Southern. So, we'll start that right now.

12 (Whereupon the witness was first
13 sworn.)

14 CHARLES SOUTHERN,
15 called as the witness herein, having been first
16 duly sworn, was examined and testified as
17 follows:

18

DIRECT EXAMINATION

19 BY MR. STERNSTEIN:

20 Q. Mr. Southern, can you, please, state
21 your full name and spell it for the record?

22 A. Charles Ervy Southern. C-H-A-R-L-E-S
23 E-R-V-Y S-O-U-T-H-E-R-N.

24 Q. Mr. Southern, are you currently

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1 employed?

2 A. Yes.

3 Q. And by whom are you currently employed?

4 A. Office of state fire marshal office.

5 Q. How long have you worked for the Office
6 of the State Fire Marshal?

7 A. Three years.

8 Q. What is your current job title there?

9 A. Storage tank safety specialist.

10 Q. And how long have you held that job
11 title?

12 A. Three years.

13 Q. And have you had any other job titles
14 since you've been with the Office of the State
15 Fire Marshal?

16 A. No.

17 Q. Okay. I'd like to ask you a few

18 questions about your education and training for
19 the job that you currently have.

20 Did you receive a college degree?

21 A. Yes.

22 Q. And from where?

23 A. Roosevelt University.

24 Q. What was your course of study there?

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1 A. BS in chemistry.

2 Q. Okay. Had you had any sort of training
3 related to your job since you left college?

4 A. I've been in the environmental field
5 for over 10 years.

6 Q. Okay. Have you had any kind of course
7 work or formal training since you've left
8 college for your job?

9 A. You mean through -- I've had in the
10 field of environmental, I was a lab tech chemist
11 for eight years at Waste Management.

12 Q. So, this is your work history before
13 coming to OSFM?

14 A. Yes.

15 Q. Did you have any other jobs before
16 coming to OSFM?

17 A. Ten years at Waste Management.
18 Q. Any other jobs?
19 A. I worked in the lab.
20 Q. In the lab where?
21 A. At Allied Signal.
22 Q. Allied Signal?
23 A. Right.
24 Q. Have you taken any course work related

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1 to your current job at OSFM?
2 A. No, I haven't.
3 Q. Okay. And as a storage tank safety
4 specialist, can you, please, describe your
5 responsibility and duties?
6 A. Responsibilities, we get involved in
7 removals, upgrades, abandonments, certification
8 audits and leak investigation concerning
9 underground storage tanks.
10 Q. And does your work take you all over
11 the state of Illinois or are you just assigned
12 to a certain area?
13 A. Usually to the southern half of Cook
14 County.
15 Q. But then you also do work in the city
16 of Chicago as well?

17 A. If I'm requested to.

18 Q. Are you familiar with the property
19 located at 3350 North Cicero in Chicago?

20 A. Yes.

21 Q. And what type of business is in
22 operation at 3350 North Cicero?

23 A. When I had gone out there, it was a
24 vacant field at the time I had gone there.

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1 Q. Are you aware of what is going on there
2 now?

3 A. No, I'm not.

4 Q. How did you become familiar with the
5 3350 North Cicero property?

6 A. I got a call from my boss Bill Alderson
7 and he told me to meet Bernie Nessler at the
8 site and help him measure the two tank fields
9 where they had tanks removed.

10 Q. How many times had you visited the
11 property located at 3350 North Cicero?

12 A. Once.

13 Q. Okay. Do you recall the date of the
14 visit?

15 A. That was June 2001.

16 Q. Were you aware that any underground
17 storage tanks had been removed from 3350 North
18 Cicero?

19 A. Just what Bernie had told me when I got
20 there on the site.

21 Q. Okay. Were you present when those
22 underground storage tanks were removed?

23 A. No, I wasn't.

24 Q. Could you see a backfill or a pile of

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1 soil at the 3350 North Cicero site where the
2 tank had been removed?

3 A. You can see a protrusion where you
4 could see the ground had been disturbed, so,
5 yes.

6 Q. And how many protrusions did you see?

7 A. Two.

8 Q. Did you measure the distance between
9 the first removal and the second removal?

10 A. Yes, we did.

11 Q. And why did you do that?

12 A. I was told by the office to give him a
13 hand to see actual measurements between the two
14 tank fields, where they were.

15 Q. How many times did you measure the

16 distance that day?

17 A. Once.

18 Q. Okay. And how did you measure it?

19 A. With the actual tape measure.

20 Q. And what was the distance between the
21 two tank pulls?

22 A. 132 feet.

23 Q. Did you measure the shortest distance
24 between those two areas where the tanks had been

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1 pulled?

2 A. Yes, we did.

3 Q. Okay. Do you know why the distance
4 between the two tanks pulls matters?

5 A. From a regulatory point we use the 100
6 foot rule, within 100 feet that's considered a
7 tank field.

8 Q. Okay. And you're familiar with the
9 definition of tank field as it is stated in the
10 Pollution Control Board regulations?

11 A. Yes.

12 MR. STERNSTEIN: That's all I have on
13 direct.

14 HEARING OFFICER HALLORAN: Thank you,

15 Mr. Sternstein.

16 Mr. Weintraub.

17 CROSS-EXAMINATION

18 BY MR. WEINTRAUB:

19 Q. Mr. Southern, are you aware that there
20 had previously been a building at 3350 North
21 Cicero Avenue, which had been demolished?

22 A. Yes.

23 MR. STERNSTEIN: Objection, outside
24 the scope of direct.

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1 MR. WEINTRAUB: Introductory question.

2 HEARING OFFICER HALLORAN: I'll allow
3 it.

4 BY MR. WEINTRAUB:

5 Q. You said on your direct examination,
6 sir, that you could see some disturbance where
7 the tanks had been, is that what you said?

8 A. Yes.

9 Q. Was there also a disturbance in
10 connection with the demolition of the building?

11 A. Not that -- I can't remember.

12 Q. Was the site leveled and graveled as of
13 June 2001?

14 A. Yes, it was.

15 Q. Was the entire site graveled?

16 A. Yes.

17 Q. How could you tell then what part had
18 been occupied by the tanks?

19 A. Before measuring Bernie had told me
20 this is where the tanks were on one end of the
21 field and at the other end he said this is where
22 it was and you could see where the soil had been
23 disturbed.

24 Q. Was the soil also disturbed by the

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1 demolition of the building?

2 A. It was pretty layered.

3 Q. Isn't it true that at least one of the
4 tanks was under the building?

5 A. I really don't know because I wasn't
6 there in the beginning.

7 Q. Okay.

8 A. This is after the fact I was there.

9 Q. If Mr. Nessler hadn't made some
10 comments to you about where the tanks had been,
11 would you have been able to determine that on
12 your own?

13 A. If you looked at the field, you could

14 tell where it had been disturbed.

15 Q. They disturbed -- where you saw
16 disturbances are you sure that wasn't a result
17 of demolition of the building?

18 A. No.

19 Q. You're sure or you're not sure?

20 A. I am sure.

21 Q. Okay. Were the areas that you're
22 saying were disturbed were they higher or lower
23 than the rest of the site?

24 A. They were higher.

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1 Q. More stone?

2 A. More stone and you could see, like I
3 said, the protrusion where you can see something
4 had taken place.

5 Q. What do you mean something had taken
6 place?

7 A. Where they backfilled with the
8 material.

9 Q. Okay. You said you were on the site
10 only once in June of 2001, that would be after
11 all six of the tanks had been removed, correct?

12 A. Yes.

13 Q. So, you have no personal knowledge as

14 to exactly where they had been located before
15 they were removed, is that true?

16 A. Only what me and Bernie had talked
17 about, yes.

18 Q. Did you draw any kind of a circle
19 around the exact location where the first five
20 tanks had been located?

21 A. I just did the measurement with Bernie
22 and we just discussed the diagram we had drawn.

23 Q. Neither of you drew a geometric circle
24 around the location of the five tanks or where

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1 you believed the tanks had been located, did
2 you?

3 A. I don't recall at this time.

4 Q. Did either of you draw a geometric
5 circle around the location of what you -- or
6 what you believed to be the location of the
7 sixth tank?

8 MS. POHN: Objection, he can only
9 testify as to what he did on the site.

10 HEARING OFFICER HALLORAN: Sustained.

11 MR. WEINTRAUB: I disagree with that
12 objection but I'll break the question up.

13 BY MR. WEINTRAUB:

14 Q. Did you draw a geometric circle around
15 the location of the sixth tank?

16 A. I don't recall. I know we made up a
17 sketch. We may have put an X or a box where it
18 was. I can't remember how we had signified it.

19 HEARING OFFICER HALLORAN: Mr.
20 Weintraub, what exhibit are you referring to, if
21 any?

22 MR. WEINTRAUB: I wasn't referring to
23 any specific exhibit.

24 HEARING OFFICER HALLORAN: Proceed.

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1 BY MR. WEINTRAUB:

2 Q. Mr. Southern, did Mr. Nessler tell you
3 that you or he needed to draw a circle around
4 the boundaries of the first five tanks to
5 determine the limits of the so-called tank
6 field?

7 A. I don't understand your question.

8 Q. Did Mr. Nessler tell you how you and he
9 were going to determine the boundaries of the
10 tank field?

11 A. Well, when we were out there he said --
12 we walked around the site. He said right here

13 is where the tank was on the north end, and on
14 the south end this is where the other tank was.
15 That's all.

16 Q. Did he say on the north end one tank or
17 five tanks or --

18 A. He said it was about five. I really
19 didn't get into the specifics. I was just there
20 to measure and --

21 Q. Did he point out all five of them?

22 A. He just said in this excavated site,
23 this is the first time I was there, and they had
24 removed tanks, and he said down at the other end

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1 was the other -- second tank that was taken out
2 and that's all we just discussed. Anything
3 about the semantics or anything, I don't know
4 anything about.

5 Q. You testified on your direct
6 examination that there was the 100 foot rule, is
7 that correct?

8 A. Yes.

9 Q. Where does that 100 foot rule come
10 from?

11 A. That comes from the definitions.

12 Q. And what is that 100 foot rule used to
13 determine?

14 A. The tank field, within 100 foot radius.

15 Q. Is there some kind of agreement between
16 the Environmental Protection Agency and the
17 Office of the State Fire Marshal regarding how
18 this 100 foot rule is to be applied?

19 MR. STERNSTEIN: Objection.

20 MS. POHN: Objection.

21 MR. STERNSTEIN: The witness isn't --
22 does not work for the Illinois EPA, and would
23 not be aware of any such agreement on their
24 part.

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1 MR. WEINTRAUB: But he works for the
2 Office of the State Fire Marshal.

3 HEARING OFFICER HALLORAN: And?

4 MR. WEINTRAUB: Excuse me.

5 HEARING OFFICER HALLORAN: And?

6 MR. WEINTRAUB: And, therefore, is an
7 employee of an agency who would be a party to
8 that agreement.

9 HEARING OFFICER HALLORAN: Mr.
10 Sternstein.

11 MR. STERNSTEIN: I just object. He is

12 an inspector, and as a result, would not be
13 involved in any type of agreements as such
14 between the Office of the State Fire Marshal and
15 the Illinois EPA. He is not a policy maker.

16 MR. WEINTRAUB: They brought up the
17 rule.

18 MR. STERNSTEIN: And I think he has
19 testified as to what the rule is and I don't --
20 other than that I don't see what else --

21 HEARING OFFICER HALLORAN: I think the
22 Respondent had opened the door somewhat, and I
23 will allow the witness to answer it if he is
24 able but wrap it up, please, Mr. Weintraub.

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1 BY MR. WEINTRAUB:

2 Q. You aware of whether there is any kind
3 of an agreement between the Illinois EPA and the
4 Office of the State Fire Marshal regarding how
5 the 100, so-called 100 foot rule is to be
6 applied?

7 A. No.

8 Q. You're not aware?

9 A. No.

10 MR. WEINTRAUB: I have no other

11 questions.

12 HEARING OFFICER HALLORAN: Thank you.

13 Mr. Sternstein, any redirect?

14 MR. STERNSTEIN: Yes, very briefly.

15 REDIRECT EXAMINATION

16 BY MR. STERNSTEIN:

17 Q. Mr. Southern, as you had stated before
18 you were present on that day in June of 2001 to
19 help Mr. Nessler measure the tank field --
20 measure the distance between the tanks fields at
21 3350 North Cicero, is that correct?

22 A. Yes.

23 Q. Okay. What I'm going to show you now
24 has been previously entered as an exhibit, that

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1 would be Respondent's Exhibit No. 3, I'm showing
2 you the second page. Does the diagram on the
3 second page of that exhibit accurately represent
4 what you measured on your visit to the site in
5 June of 2001?

6 A. Yes.

7 MR. WEINTRAUB: I'm going to object,
8 beyond the scope of cross. He could have asked
9 about it on direct, he didn't.

10 HEARING OFFICER HALLORAN: Well, I

11 allowed you to do a little introduction so I'll
12 allow this one brief question by the Respondent.
13 You may answer. Overruled.

14 BY MR. WEINTRAUB:

15 Q. And what is the distance between the
16 closest edge of the first tank field and the
17 second tank field?

18 A. Measure 133.

19 Q. 133?

20 A. Feet.

21 MR. STERNSTEIN: Thank you, Mr.

22 Southern. Nothing further.

23 HEARING OFFICER HALLORAN: Thank you,

24 Mr. Weintraub.

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1 Any recross?

2 MR. WEINTRAUB: No.

3 HEARING OFFICER HALLORAN: You may step
4 down, sir. Thank you.

5 (Whereupon the witness was first
6 sworn.)

7 DEANNE LOCK,
8 called as the witness herein, having been first
9 duly sworn, was examined and testified as

10 follows:

11 DIRECT EXAMINATION

12 BY MS. POHN:

13 Q. Please, state your full name and spell
14 it for the record?

15 A. Deanne Lock, D-E-A-N-N-E L-O-C-K.

16 Q. Are you currently employed?

17 A. Yes.

18 Q. And by whom?

19 A. The Office of the State Fire Marshal.

20 Q. How long have you worked for the OSFM?

21 A. I'm in my 15th year.

22 Q. What is your current title?

23 A. Administrative assistant.

24 Q. And how long have you had that title?

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1 A. Five years.

2 Q. What other titles did you have
3 previously?

4 A. Executive secretary.

5 Q. Any others?

6 A. Clerk typist.

7 Q. Okay. As an administrative assistant,
8 generally what are your responsibilities?

9 A. My responsibilities are making

10 determinations of eligibility and setting
11 deductibles for incidence, applications that are
12 submitted to us to access the underground
13 storage tank program.

14 Q. Approximately what percent of your job
15 does that entail?

16 A. Approximately 80 percent of my job.

17 Q. What is the first thing you do when you
18 receive an application?

19 A. We enter it into our computer database.

20 Q. Okay. What are the factors that are
21 considered in determining eligibility?

22 A. We use the factors that are in the
23 Environmental Protection Act.

24 Q. Okay. Where does the information come

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1 from that you apply the factors to?

2 A. They come from the application, the
3 computer database and our records, our file
4 records.

5 Q. Is there anything outside of that that
6 you look to in making a determination?

7 A. If we have to, we can look at it, but
8 it usually is already in the file, the

9 inspector's removal log. That's usually it.

10 Q. Is there any particular office policy
11 or procedure for making the eligibility
12 determination outside of using the factors in
13 the act?

14 A. Outside the factors, no.

15 Q. Okay. This is Respondent's Exhibit No.

16 4. Do you recognize that?

17 Can you tell me generally what it is?

18 A. This is an application by MAC
19 Investments to access the underground storage
20 tank fund.

21 Q. Is that part of the Office of the State
22 Fire Marshal files?

23 A. Yes.

24 Q. And do you believe that to be an

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1 accurate representation of what is in the file?

2 A. I'd have to look at the file again, but
3 I would say yes. There seems to be information
4 missing though.

5 Q. What information would that be?

6 A. Well, this isn't showing all of the
7 tanks at the site.

8 Q. I believe that was an earlier

9 application.

10 A. Oh, okay. Then, yes, it would be.

11 MS. POHN: Okay. I'd like to ask that
12 that be entered, Respondent's 4.

13 HEARING OFFICER HALLORAN: Mr.
14 Weintraub?

15 MR. WEINTRAUB: One minute. I'm going
16 to object. The document says on its face that
17 it is for the property at 3300 North Cicero
18 Avenue, Chicago, not for the property which is
19 the subject of this hearing, and, therefore --

20 MS. POHN: I believe your petition
21 referenced that application, and I wanted to
22 keep all three applications clear. It is my
23 intent to enter all three applications and all
24 three determinations.

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1 MR. WEINTRAUB: I still think it is
2 irrelevant even though they did charge us a
3 third deductible for the property across the
4 street.

5 HEARING OFFICER HALLORAN: Do you agree
6 it's in your petition, Mr. Weintraub? We can
7 go off the record, take a look.

8 (Off the record.)

9 MR. WEINTRAUB: There is a reference in
10 paragraph 9 to the petition for the property
11 across the street at 3300 North Cicero Avenue,
12 but it is not -- in the separate deductible --
13 the third deductible that was charged for that
14 property, but it is not the subject of the
15 deductible which we were contesting.

16 HEARING OFFICER HALLORAN: But it is
17 referenced in your petition, I'm going to
18 overrule your objection and allow Respondent's
19 Exhibit No. 4 into evidence.

20 MS. POHN: If it will expedite things,
21 I'll skip to the next application. That's fine.
22 I'll withdraw the exhibit.

23 HEARING OFFICER HALLORAN:
24 Respondent's -- Respondent's Exhibit No. 4 is

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1 withdrawn.

2 BY MS. POHN:

3 Q. I'm going to have another exhibit for
4 you, however.

5 Ms. Lock, do you recognize this
6 document?

7 A. Yes, I do.

8 Q. Can you tell me generally what it is?
9 A. This is an application for eligibility
10 to the underground storage tank fund.
11 Q. Tell me the date on the application?
12 A. The day we received it?
13 Q. Yes.
14 A. We received it June 13th of 2000.
15 Q. Okay. Do you believe that to be an
16 accurate copy of the application on file at the
17 state fire marshal?
18 A. Yes, I do.
19 MS. POHN: Okay. I'd like to ask that
20 this be entered as Respondent's Exhibit No. 4.
21 MR. WEINTRAUB: Isn't this document
22 already in evidence as Petitioner's Exhibit No.
23 5?
24 MS. POHN: Yes, several of my exhibits

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1 have as well been Respondent exhibits.
2 MR. WEINTRAUB: On the basis that this
3 is a copy of a document already in evidence, I
4 certainly don't have any objection to it being
5 in evidence again.
6 HEARING OFFICER HALLORAN: Respondent's

7 Exhibit No. 4 is admitted.

8 (Respondent's Exhibit No. 4 was
9 admitted.)

10 BY MS. POHN:

11 Q. Thank you.

12 Can you tell me how many underground
13 storage tanks did that application apply to?

14 A. That application is seeking
15 reimbursement for three tanks.

16 Q. Okay. What is the address where those
17 tanks were located?

18 A. 3350 North Cicero in Chicago.

19 Q. What is the date that the underground
20 storage tanks were removed?

21 A. 4/12, 1999.

22 Q. Did any of those tanks have releases?

23 A. Three.

24 Q. Okay. What is the release date?

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1 A. The date they notified IEMA is April of
2 1999.

3 Q. And for purposes of determining a
4 deductible pursuant to an application would that
5 be the date you used as the release date?

6 A. Yes.

7 Q. Did you personally make the deductible
8 determination on that application?

9 A. Yes, I did.

10 Q. And what was your deductible
11 determination?

12 A. I'd need to see the letter that goes
13 with the application.

14 Q. Okay. This is Respondent's 5, this as
15 well has also been in evidence already.

16 Does that letter tell you what the
17 deductible determination was?

18 A. Yes, it's \$15,000.

19 Q. Okay. And why was the deductible
20 \$15,000?

21 A. Because they had tanks which were
22 registered on time and tanks which were
23 registered late.

24 Q. And are those a factor considered under

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1 the act?

2 A. Yes, it is.

3 MR. WEINTRAUB: Again, I want to set
4 forth a continuing objection with respect to the
5 deductibility -- I'm sorry, withdraw that.

6 HEARING OFFICER HALLORAN: You may
7 proceed.

8 BY MS. POHN:

9 Q. Is that a proper deductible that was
10 assessed?

11 A. Yes, it is.

12 Q. Do you recognize this application?

13 A. Yes.

14 Q. And what is the date on this
15 application?

16 A. We received it January 19th, 2001.

17 Q. How many underground storage tanks does
18 this application apply to?

19 A. One.

20 Q. And what is the address for where it is
21 located?

22 A. 3350 North Cicero in Chicago.

23 Q. So, that would be the same address as
24 the previous application?

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1 A. Yes.

2 Q. What date was that tank removed?

3 A. October 16, 2000.

4 Q. Okay. And did that tank have a
5 release?

6 A. Yes.

7 Q. And, again, what is the release date
8 for that tank?

9 A. October 17, 2000.

10 Q. Okay. And can you tell me how much
11 time there was between the two releases?

12 A. Between what two releases?

13 Q. I'm sorry. Between the release date
14 from the first application and the release date
15 from the second application.

16 A. A year and a half.

17 Q. Okay. Would those -- would that year
18 and a half in between the two occurrence dates
19 would that effect your determination of the
20 deductible?

21 A. We don't look at that particularly,
22 that particular issue. That is not a factor in
23 our determination. It's a factor of the
24 Environmental Protection Act, but it's not a

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1 factor of our determination.

2 Let me explain.

3 Q. Please.

4 A. Incident numbers are reported by the

5 inspectors and the property owner, only they or
6 a designated agent can report an incident to
7 IEMA.

8 Q. Okay.

9 A. Applications are submitted to the state
10 fire marshal's office based on an incident.

11 Q. Uh-huh.

12 A. Each incident must be reported on a
13 separate application. Each application receives
14 a separate deductible, unless it is determined
15 that the two are one incident.

16 Q. I see.

17 So, is it your testimony then that once
18 you see two separate incident numbers, that
19 those are, therefore, separate occurrences?

20 A. Yes.

21 Q. And that the 18 month time period is
22 something that is determined before it gets to
23 you?

24 A. Generally, yes.

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1 Q. Okay. Did you make a determination on
2 this application for a deductible?

3 A. I believe so but I need to see the
4 letter.

5 Q. Do you recognize this letter?

6 A. Yes, I do.

7 Q. And is this letter reflective of your
8 determination on this application?

9 A. Yes, it is.

10 Q. And what was your determination?

11 A. That the tank was eligible with a
12 \$15,000 deductible.

13 Q. And can you tell me the factors that
14 you considered in making this determination?

15 A. Yes. The facility had tanks which were
16 registered on time, according to the
17 Environmental Protection Act, and tanks which
18 were registered late. In addition, the facility
19 had multiple incident numbers and the inspector
20 determined they were two separate releases.

21 Q. Okay. Were there any other factors
22 that you were considering other than what you
23 just stated?

24 A. We have to look at everything that is

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1 in the file, but the primary issues are whether
2 or not the tanks are registered on time, whether
3 the releases are separate releases. They

4 submitted the application under a separate
5 incident number, therefore, to us it was a
6 complete and separate incident. Deductibles are
7 based on per incident.

8 MS. POHN: Nothing further.

9 HEARING OFFICER HALLORAN: Thank you.

10 Mr. Weintraub, cross?

11 MR. WEINTRAUB: Yes. Please.

12 CROSS-EXAMINATION

13 BY MR. WEINTRAUB:

14 Q. Ms. Lock, you said that these
15 applications were submitted under separate
16 incident numbers, is that correct?

17 A. Uh-huh.

18 Q. Those incident numbers, they're not
19 assigned by the applicant, are they?

20 A. No.

21 Q. Okay. Are you aware as to whether the
22 applicant here requested that these be
23 classified under the same incident number?

24 A. Under the same incident number, no.

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1 Q. You're not aware?

2 A. No.

3 Q. I take it it would be fair to assume

4 that you're familiar with the statutory
5 provisions of the Illinois Environmental
6 Protection Act dealing with the leaking
7 underground storage tank program?

8 A. Only the -- only the points that I have
9 to deal with.

10 Q. Okay. Are you familiar with the
11 definition of the term site that is set forth in
12 Section 57.2?

13 A. Site?

14 Q. Site.

15 A. No.

16 Q. I'm going to show you my copy of the
17 Environmental Protection Act and direct your
18 attention to Section 57.2, it's actually page
19 174 of the booklet that the EPA puts out, and
20 ask you to read the definition of the term site
21 at the top of the left-hand column.

22 A. "Site means any single location, place,
23 tract of land or parcel of property, including
24 contiguous property not separated by a public

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1 right-of-way."

2 Q. Do you use that definition in making

3 your determinations of eligibility and
4 deductibility under the underground storage tank
5 program?

6 A. Yes.

7 Q. Okay. May I have the book back,
8 please?

9 I'm going to show you what has been
10 admitted into evidence as Petitioner's Exhibit
11 No. 3. This is a survey of the property at 3350
12 North Cicero Avenue. The boundaries of that
13 property as shown on the survey are West
14 Henderson Street on the north, North Cicero
15 Avenue on the east, Roscoe on the -- I'm sorry,
16 Henderson on the south, Cicero on the east,
17 Roscoe on the north and an alley to the west.
18 Do you see those boundaries?

19 A. Yes.

20 Q. Based on that survey it is true, is it
21 not, Ms. Lock, that the property commonly known
22 as 3350 North Cicero Avenue shown on that in
23 that survey constitutes a single site as defined
24 in Section 57.2 of the Environmental Protection

1 Act?

2 MS. POHN: Objection, calls for a legal

3 conclusion.

4 MR. WEINTRAUB: She is the one
5 apparently who made the determination and I'm
6 entitled to know whether she applied the
7 statutory term.

8 HEARING OFFICER HALLORAN: You know, I
9 agree. I'm going to overrule your objection.
10 If she can answer it -- if you're able to answer
11 it, you may answer.

12 THE WITNESS: Our agency recognizes
13 this as one site.

14 BY MR. WEINTRAUB:

15 Q. Thank you.

16 Ms. Lock, you told us you're familiar
17 with the Environmental Protection Act.

18 Is there anything in Title 16 of the
19 Environmental Protection Act dealing with
20 leaking underground storage tanks which says
21 that more than one deductible can be assessed if
22 tanks are more than 100 feet apart?

23 A. I'm not familiar with Title 16. I'd
24 have to see a copy of it.

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1 Q. Okay. Title 16 starts with Section 57

2 on page 173.

3 A. And what was your question?

4 Q. Question is, is there anything in Title
5 16 of the act which says that more than one
6 deductible can be assessed if tanks are more
7 than 100 feet apart?

8 A. I've never read this before so I don't
9 know.

10 Q. Okay. Want to take a second and look
11 at it, see if there is anything?

12 A. This whole page?

13 Q. Yes.

14 MS. POHN: We'll stipulate that it is
15 not in Title 16.

16 MR. WEINTRAUB: Thank you.

17 HEARING OFFICER HALLORAN: So
18 stipulated.

19 THE WITNESS: I've never seen it
20 before.

21 MS. POHN: That's okay.

22 BY MR. WEINTRAUB:

23 Q. Now, you told us, I believe, that you
24 made the decision to assess the second \$15,000

1 deductible with respect to this sixth tank that

2 was found on the site, is that correct?

3 A. Yes.

4 Q. Is it true that the basis on which this
5 second deductible was charged was because you
6 believed or your agency believed that the sixth
7 tank was more than 100 feet from the other five
8 tanks?

9 A. No.

10 Q. What was the basis on which the second
11 deductible was charged?

12 A. On more than one issue. They submitted
13 the application a separate incident number, and
14 the fact that the inspector gave them another
15 incident number because it was outside of the
16 100 foot radius.

17 Q. So, you based your determination on the
18 fact that an inspector had assigned a separate
19 incident number?

20 A. No. I based my determination upon the
21 fact they submitted an eligibility application
22 under a separate incident number.

23 Q. And why were they given a separate
24 incident number?

1 MS. POHN: Objection. She testified
2 she didn't have a part in that process and that
3 that number is assigned by a separate agency by
4 which she is not employed.

5 HEARING OFFICER HALLORAN: Sustained.

6 MR. WEINTRAUB: Okay.

7 BY MR. WEINTRAUB:

8 Q. I'm showing you what has been marked as
9 Petitioner's Exhibit No. 11.

10 Can you tell me, please, what this
11 document is?

12 A. Well, it's a note about the -- our
13 facility file for MAC Investments.

14 Q. Can I have that one back and let me
15 give you this copy?

16 A. Is it the same?

17 Q. Yes.

18 Give you the original.

19 HEARING OFFICER HALLORAN: Thank you.

20 BY MR. WEINTRAUB:

21 Q. Have you ever seen this document
22 before?

23 A. Yes, I have.

24 Q. Is it contained within the file, the

1 eligibility deductible determination for MAC
2 Investments for the property at 3350 North
3 Cicero Avenue?

4 A. Yes, it is.

5 Q. Do you know who prepared this?

6 A. I don't know unless I did it and I
7 don't remember. I honestly don't.

8 Q. But you've seen it in the file?

9 A. Yes, I have.

10 Q. Would you read the last sentence,
11 please?

12 A. The last sentence?

13 Q. Yes.

14 A. "A review of the file and information
15 obtained from department of environment revealed
16 this tank to be in a separate tank bed and,
17 therefore, a separate deductible was given for
18 this application."

19 Q. Okay. Again, my question is, is the
20 basis for which a second deductible was charged
21 the fact that the sixth tank was believed to be
22 more than 100 feet from the other five tanks?

23 A. We don't make that determination. We
24 simply make determinations based on applications

1 received by incident number.

2 Q. Okay.

3 A. We --

4 Q. So someone assigns an incident number
5 and if they give it a separate incident number,
6 you treat it as a separate deductible?

7 A. Yes.

8 MR. WEINTRAUB: At this time I would
9 offer Petitioner's Exhibit No. 11.

10 MS. POHN: No objection.

11 HEARING OFFICER HALLORAN: Petitioner's
12 Exhibit No. 11 is admitted into evidence.

13 (Petitioner's Exhibit No. 11 was
14 admitted.)

15 BY MR. WEINTRAUB:

16 Q. Is it true that you have no independent
17 knowledge as to how this determination of a,
18 quote, unquote, separate tank bed was made?

19 A. Do I have any knowledge?

20 Q. Right.

21 A. No. Personal knowledge, no.

22 Q. To your knowledge, is there anything in
23 writing concerning how the so-called 100 foot
24 rule is to be applied?

1 MS. POHN: I'm going to object again
2 because that is not part of what she testified
3 that she has knowledge about, nor applies
4 through her job.

5 MR. WEINTRAUB: I asked her her
6 knowledge.

7 HEARING OFFICER HALLORAN: Sustained.

8 BY MR. WEINTRAUB:

9 Q. Showing you what I've marked as
10 Petitioner's Exhibit No. 12. Have you ever seen
11 this document before?

12 A. Yes.

13 Q. Where did you see it?

14 A. In the facility file.

15 Q. For the MAC Investments application on
16 3350 North Cicero?

17 A. It doesn't say what it is for, it just
18 says it's for that facility.

19 MR. WEINTRAUB: Could I see a copy of
20 this?

21 Thank you.

22 BY MR. WEINTRAUB:

23 Q. It makes reference to a person named
24 Cliff. Who would that be?

1 A. I don't know. I didn't type this.

2 Q. Is there a Cliff that you're familiar
3 with that works for OSFM?

4 A. Yes.

5 Q. Who is that?

6 A. Cliff Manus.

7 Q. Okay. Are you familiar with any kind
8 of written guidance within the department,
9 within the Office of the State Fire Marshal
10 regarding how the 100 foot rule is to be
11 applied?

12 MS. POHN: Again, I would object
13 because she testified already that that is not
14 part of her determination for the deductibles.

15 HEARING OFFICER HALLORAN: But it's my
16 understanding this is in the file and she does
17 look at the file, correct? She may answer if
18 she is able. Objection overruled.

19 THE WITNESS: Would you repeat that,
20 please?

21 BY MR. WEINTRAUB:

22 Q. Are you familiar with any kind of
23 written guidance or documentation maintained by
24 the Office of the State Fire Marshal regarding

1 how the so-called 100 foot rule is to be
2 applied?

3 A. No.

4 Q. Are you familiar with any kind of an
5 agreement between the EPA and the Office of the
6 State Fire Marshal regarding how the 100 foot
7 rule is to be applied?

8 A. No.

9 Q. Is this document a true and correct
10 copy of an original that is maintained within or
11 contained within the MAC Investments file?

12 A. I guess so, yes.

13 Q. You've seen this there?

14 A. Yes.

15 MR. WEINTRAUB: I would offer
16 Petitioner's Exhibit No. 12.

17 MS. POHN: No objection.

18 HEARING OFFICER HALLORAN: Petitioner's
19 Exhibit No. 12 is admitted.

20 (Petitioner's Exhibit No. 12 was
21 admitted.)

22 BY MR. WEINTRAUB:

23 Q. Ms. Lock, you deal with applications
24 for determinations of eligibility and deductible

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1 every day or almost every day I would assume?

2 A. Most days, yes.

3 Q. You're, of course, familiar with the
4 form?

5 A. Yes.

6 Q. Is there even anything on the form that
7 talks about disclosure of distances between
8 tanks or tank field?

9 A. No.

10 Q. Unless some inspector were to raise the
11 issues, is it fair to say that you would not
12 even consider distances between tanks when
13 you're making your deductible determination?

14 A. We could raise the issue, but generally
15 no.

16 Q. I'm going to mark this as Exhibit 13,
17 and ask for indulgence because I don't have
18 extra copies.

19 HEARING OFFICER HALLORAN: You want to
20 show Ms. Pohn?

21 BY MR. WEINTRAUB:

22 Q. Ms. Lock, are you familiar with this
23 document?

24 A. Yes.

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1 Q. Did you prepare it or have input into
2 its preparation?

3 A. Yes.

4 Q. Which was it, did you prepare it?

5 A. I believe I prepared this.

6 Q. Okay. You prepared it in connection
7 with this proceeding, correct?

8 A. Yes.

9 Q. Direct your attention to the response
10 to question 2E of the interrogatories. Was that
11 an accurate response when you prepared that?

12 A. May I read it, please?

13 Q. Sure.

14 A. Yes.

15 Q. And to the best of your knowledge, is
16 that still an accurate response?

17 A. 2E. I'm not sure I know what the
18 question is though.

19 Q. You indicated a moment ago that you
20 believed that was an accurate response at the
21 time you --

22 A. In general --

23 Q. -- prepared it?

24 A. -- determinations.

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1 Q. Do you believe it still to be accurate?

2 A. No.

3 Q. Why not?

4 A. Because there is information in the
5 file, in the MAC Investments file to show the
6 distances of the tanks.

7 Q. I'm talking about general statement?
8 May I see it back, please?

9 A. Uh-huh.

10 Q. Yes. Question 2E of the
11 interrogatories to which Petitioner's Exhibit 13
12 responds read as follows: For each site as that
13 term is defined in Section 57.2 of the
14 Environmental Protection Act, 415 ILCS 5/57.2,
15 for which more than one deductible amount has
16 been assessed or charged since January 1, 1998,
17 specify, E, the distances between each of the
18 underground storage tanks on the site, your
19 answer was -- if you'll please read it.

20 A. "I do not have the resources available
21 to specify the distances between each of the
22 underground storage tanks on the site for which
23 more than one deductible amount has been
24 assessed for an E&D application since January 1,

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1 1998, as this information would only be
2 available if provided by an inspector."

3 Q. Thank you.

4 And that remains true today?

5 A. Yes.

6 Q. It's also true that you don't have any
7 computer records or similar records that show
8 how many other sites, if any, were assessed more
9 than one deductible based on the so-called 100
10 foot rule?

11 A. No.

12 Q. No, you don't have any such?

13 A. We don't have any computer records of
14 that.

15 Q. Thank you. May I have that back?

16 MR. WEINTRAUB: At this time I would
17 offer Petitioner's Exhibit 13.

18 MS. POHN: No objection.

19 HEARING OFFICER HALLORAN: No
20 objection?

21 MS. POHN: No objection.

22 HEARING OFFICER HALLORAN: Petitioner's
23 Exhibit No. 13 is admitted.

24 (Petitioner's Exhibit No. 13 was

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1 admitted.)

2 BY MR. WEINTRAUB:

3 Q. Ms. Lock, I want you to know that I
4 appreciate all of the time that you and whoever
5 was involved in the agency took in responding to
6 discovery requests and among the materials that
7 we did receive in response was a file on another
8 site and I'll give you the whole file, let Ms.
9 Pohn look at it as well, but it appears to me
10 that this site has --

11 MS. POHN: I'm going to object. There
12 is no other site at issue here as Mr. Weintraub
13 has repeatedly pointed out including another
14 sites owned by the Petitioner.

15 MR. WEINTRAUB: That's a true
16 statement, however, we now come to the issue of
17 how this so-called 100 foot rule has been
18 applied in the state of Illinois and these are
19 documents that they've produced and appear to
20 show, unless I'm wrong, and if I am, I am
21 willing to stand corrected that there are other
22 sites with multiple tanks separated by more than
23 100 feet which aren't charged multiple
24 deductibles. Their own documents. And I

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1 certainly think it goes to the issue in this
2 case.

3 HEARING OFFICER HALLORAN: Ms. Pohn.

4 MS. POHN: Ms. Lock testified to the
5 fact that she is not out there measuring this
6 100 foot distance between the tanks and she is
7 not the one applying any of the 100 foot tank
8 field definitions. She is assessing deductibles
9 based on incident numbers. If the inspectors
10 are seeking other incident numbers from IEMA
11 based on the 100 foot rule, then they would be
12 the appropriate people to testify. This is not
13 something within either the scope of the direct
14 or the scope of the case.

15 HEARING OFFICER HALLORAN: Was this in
16 the file or the record or did you request this,
17 Mr. Weintraub?

18 MR. WEINTRAUB: This is discovery
19 materials produced by the Office of the State
20 Fire Marshal in response to our request for
21 documents.

22 HEARING OFFICER HALLORAN: Okay. So
23 this document you're referring to was not in the

24 file that the witness went through to determine

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1 the deductible?

2 MR. WEINTRAUB: No, this is another
3 applicant, I will state for the record it's got
4 nothing to do with this property. It's actually
5 located apparently in Highland Park and appears
6 to indicate that if there is such a 100 foot
7 rule it is not applied consistently to say the
8 least.

9 HEARING OFFICER HALLORAN: You know, I
10 think I'm going to sustain -- well, I know I'm
11 going to sustain Ms. Pohn's objection, however,
12 you may present it as an offer of proof and I'll
13 take it with the case and the board can take a
14 look at it and decide whether or not it is
15 relevant.

16 MR. WEINTRAUB: Thank you.

17 The offer of proof would be as follows.
18 That the Office of the State Fire Marshal has
19 produced in discovery a file captioned issue
20 pending Highland Park facility number 2-012753,
21 and contained within that file is a two page
22 document entitled, log of underground storage
23 tank removal and an attached sketch. On the

24 first page the log it says, and I quote,

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1 multiple excavations at site over 100 feet
2 apart, see reverse for diagram. And there is an
3 attached diagram. File also contains a
4 deductibility and eligibility application dated
5 October 7, 1998, which assesses a single \$15,000
6 deductible and shows four tanks, the same four
7 tanks that are shown in this sketch as eligible
8 tanks. That letter was signed or stamped with
9 the name of Melvin H. Smith, and as I said, is
10 dated October 7, 1998.

11 That would be the offer of proof. And
12 the offer of proof would also include -- and I
13 don't know how you wish to treat this, an offer
14 into evidence of the two page log of underground
15 storage tank removal and the three page letter
16 of determination dated October 7, 1998.

17 HEARING OFFICER HALLORAN: I think what
18 we'll do is we'll mark it as Petitioner's
19 Exhibit No. 14, I will not admit it other than
20 for an offer of proof and I'll take it with the
21 case, and before I close this hearing, I will
22 rattle off for the record what is in that file

23 so the board will be cognizant of it.

24 MR. WEINTRAUB: That's fine.

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1 BY MR. WEINTRAUB:

2 Q. You were asked about the two
3 determination letters that were sent to MAC
4 Investments, the first for the original tanks
5 and the second letter for the sixth tank, do you
6 recall that? In fact, you should probably have
7 it in front of you as well.

8 The second determination letter, which
9 is dated February 21, 2001, you have that?

10 A. Yes.

11 Q. Is there anything in that letter that
12 disclosed to the applicants that the basis for
13 second deductible being charged was this
14 so-called 100 foot rule?

15 MS. POHN: Objection, that is not what
16 she testified to.

17 MR. WEINTRAUB: That wasn't the
18 question.

19 MS. POHN: The question assumes that
20 she testified that the 100 foot rule was the
21 basis for her eligibility determination.

22 HEARING OFFICER HALLORAN: Mr.

23 Weintraub, could you rephrase that, or try to,
24 please?

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1 MR. WEINTRAUB: Yes. Thank you.

2 BY MR. WEINTRAUB:

3 Q. Was there anything in that second
4 determination letter that disclosed to the
5 applicant that a second deductible was being
6 charged based in any way on the distances or
7 claimed distances between the tanks?

8 A. No.

9 Q. Thank you.

10 Assuming for purposes of argument and
11 for purposes of this question that some concept
12 of tank field applies, are you familiar with how
13 the boundaries of a tank field should be
14 determined?

15 MS. POHN: Objection, she is not a
16 field inspector.

17 HEARING OFFICER HALLORAN: She may
18 answer if she is able.

19 THE WITNESS: No.

20 HEARING OFFICER HALLORAN: Thank you.

21 MR. WEINTRAUB: I don't have any other

22 questions.

23 HEARING OFFICER HALLORAN: Thank you,

24 sir.

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1 Ms. Pohn, any redirect?

2 MS. POHN: Just briefly.

3 REDIRECT EXAMINATION

4 BY MS. POHN:

5 Q. Ms. Lock, could you find Respondent's
6 Exhibit 4? It's a June 13 application date.

7 A. Okay.

8 Q. On the last page there is UST
9 information sheet. Does this appear to be
10 information for the first five tanks at 3350?

11 A. Yes.

12 Q. And can you tell me is there an IEMA
13 number assigned?

14 A. Yes.

15 Q. And can you tell me what that is?

16 A. 99-0882.

17 Q. And is there only one IEMA number?

18 A. On this application?

19 Q. Yes.

20 A. Yes.

21 Q. Is it your understanding that when the

22 sixth tank was found and pulled, a separate IEMA
23 number was assigned to that tank?

24 A. Yes.

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1 Q. Are the two separate IEMA numbers your
2 basis for the two separate deductibles?

3 A. Yes.

4 MS. POHN: Nothing further.

5 HEARING OFFICER HALLORAN: Thank you.

6 Mr. Weintraub, any recross?

7 MR. WEINTRAUB: No.

8 HEARING OFFICER HALLORAN: You may step
9 down.

10 Let's cleanup that offer of proof right
11 now, if I can take it, I'll read into the record
12 briefly, what I'll do after I leave here I'll
13 put it in a brown manila envelope.

14 MS. POHN: If I may, could the
15 witnesses leave. She has a flight she needs to
16 catch.

17 HEARING OFFICER HALLORAN: Sure.

18 We'll go off the record.

19 (Off the record.)

20 HEARING OFFICER HALLORAN: Back on the

21 record.

22 Before I forget, I have to make a
23 credibility determination and based on my legal
24 judgment, experience, I found that there is no

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1 credibility issues with any of the witnesses
2 that testified here today.

3 Secondly, I want to, for the record, I
4 want to clarify this offer of proof handed to me
5 by the Petitioner. It is marked Petitioner's
6 Exhibit No. 14. It was not admitted, but they
7 do wish to enter it and take it with the case.
8 It consists of five pages that are stapled
9 together. The front page is dated September 17,
10 1998, file stamped. And I'll stick it in a
11 manila envelope when I leave here.

12 Also, off the record, we talked about
13 post-hearing briefs. We calculated the record
14 should be on Website by August 5. With that the
15 parties agree that Petitioner's opening brief,
16 post-hearing brief would be due on or before
17 September 3rd, Respondent's post-hearing brief
18 is due September 30, on or before September
19 30th, and Petitioner's reply, if any, is due on
20 or before October 15th, and I'm going to set a

21 public comment period cut-off date is August
22 19th, 2002.

23 With that said, the parties have agreed
24 to waive their closing argument and submit the

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1 arguments in the post-hearing brief.

2 Any other issues I haven't covered or
3 anybody wants to --

4 MR. WEINTRAUB: I don't think so.

5 HEARING OFFICER HALLORAN: I
6 appreciate your professionalism, civility. In
7 any event, have a good trip home. Thank you
8 very much.

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