

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
UAP RICHTER COMPANY (McDonough County)

(Property Identification Number 08-000-071-001)
Petitioner,

No. PCB 02-184

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent,

Proceedings held on September 24th, 2002, at 10:00 a.m. at the offices of
the Illinois Pollution Control Board, 600 South Second Street, Suite 403,
Springfield, Illinois, before Steven C. Langhoff, Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR

CSR License No.: 084-004316
KEEFE REPORTING COMPANY

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A P P E A R A N C E S

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1 HEARING OFFICER LANGHOFF: Good morning everyone. My name
2 of is Steven Langhoff. I'm the Pollution Control Board Hearing
3 Officer who is handling this matter and will be holding this
4 hearing today. This is PCB 02-148, UAP Richter Company versus

5 Illinois Environmental Protection Agency. For the record it is
6 Tuesday, September 24th, 2002, and we are beginning at 10 a.m.

7 I want to note for the record that there are no members of

8 the public present. Members of the public are encouraged and
9 allowed to provide public comments if they so choose.

10 At issue in this case is a tax certification denial by the
11 Illinois Environmental Protection Agency, or agency.

12 On April 22nd, 2002, the Agency recommended that the Board
13 deny a tax certificate for UAP Richter's portion of a building
14 over their mini bulk and package agrichemical, secondary

15 containment structure where mini bulking and package agrichemical
16 containers are warehoused in McDonough County. On June 3rd,
17 2002, UAP Richter Company filed a petition to review the Agency's
18 tax certification recommendation.

19 I want to take a brief moment to let you know what is going
20 to happen today and after the proceeding today. You should know
21 that it is the Pollution Control Board, and not me, that will
22 make the final decision in this case. My job as hearing officer
23 requires that I conduct today's hearing in a neutral and orderly
24 manner so that we have a clear record of the proceedings today.

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1 It is also my duty to assess the credibility of any
2 witnesses giving testimony today, and I will do so on the record
3 at the conclusion of the proceedings.

4 We will begin with any opening statements from the parties
5 and then we will proceed with UAP Richter's case followed by the
6 Agency having an opportunity to put on a case in its behalf.

7 We will conclude with any closing arguments that the
8 parties may wish to make and then we will discuss off the record
9 a briefing schedule which will then be set on the record at the
10 conclusion of the proceeding.

11 The Board's procedural rules in the act provide that
12 members of the public shall be allowed to speak or submit written
13 statements at hearings.

14 Any person offering such testimony today shall be subject
15 to cross-examination by both the parties.

16 Any such statement offered by members of the public must be
17 relevant to the case at hand.

18 I will call for any statements from members of the public
19 at the conclusion of the proceedings.

20 This hearing was noticed pursuant to the act and the
21 Board's rules and regulations and will be conducted pursuant to
22 Sections 101.600 through 101.632 and Part 125 of the Board's
23 procedural rules.

24 At this time I will ask the parties to make their

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1 appearances on the record beginning with UAP Richter.

2 MR. ROOSEVELT: Good morning. My name is Greg Roosevelt.
3 I represent the company UAP Richter here this morning.

4 HEARING OFFICER LANGHOFF: Thank you, Mr. Roosevelt.

5 MS. MORENO: Yes, good morning. My name is Lisa Moreno and
6 I represent the Environmental Protection Agency, and I have with
7 me Mr. Dan Heacock who is the manager of the facility evaluation
8 unit of the Watershed Management Section of the Bureau of Water,
9 and the tax certifications are prepared under his supervision and

10 he's here assisting me today.

11 HEARING OFFICER LANGHOFF: Thank you, Ms. Moreno. Do we
12 have any preliminary matters, any outstanding or prehearing
13 motions that the parties would like to present before we go
14 ahead? No? Okay. Thank you. And would the petitioner like to
15 give a brief opening statement?

16 MR. ROOSEVELT: If I may, Mr. Hearing Officer, just briefly
17 I wanted to introduce and tell you that I will be calling as my
18 first witness Mr. Keith Fricke who is with UAP Richter, has been
19 for a number of years, who will testify regarding the containment
20 structures here that are the subject of this petition. May also
21 call John Turini, briefly, who is a general manager of Burrows Ag
22 Service (phonetic), operates a similar facility in the industry,
23 and may also shed light on this type of chemical agricultural
24 facility. And then Keith Honegger who is the -- working for the
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1 company in the tax certification process here.

2 And that Mr. Fricke will describe his training and
3 experience. He worked for the Department of Agriculture in their
4 chemical fertilizer regulation area for 10 years for the State of
5 Illinois before he went to this company and will testify
6 concerning the issue at hand, which is this structure over this

7 one part of the containment building. We're here on that issue
8 of the structure overhead itself and we want to -- shown by
9 testimony that this is a structure designed for, and its chief
10 purpose is, pollution control. And we appreciate your hearing
11 the case today.

12 HEARING OFFICER LANGHOFF: Okay. Thank you. Ms. Moreno.

13 MS. MORENO: Thank you. Mr. Hearing Officer, if I might,
14 I'd like to defer my opening statement until after the --

15 HEARING OFFICER LANGHOFF: The case in chief.

16 MS. MORENO: Case in chief.

17 HEARING OFFICER LANGHOFF: Excellent. Thank you.

18 Mr. Roosevelt, go ahead and call your first witness.

19 MR. ROOSEVELT: Keith, if you would step up there.

20 HEARING OFFICER LANGHOFF: And would you swear the witness,
21 please.

22 (Whereupon the witness was sworn by the Notary Public.)

23 DIRECT EXAMINATION

24 Q. (By Mr. Roosevelt) Would you state your name for us,
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1 please, sir?

2 A. Keith A. Fricke.

3 Q. How do you spell your last name?

4 A. F-R-I-C-K-E.

5 Q. What is your vocation?

6 A. My position with UAP is I'm the environmental regulatory
7 service manager for the company.

8 Q. And how long have you been so employed?

9 A. Four years.

10 Q. What are your responsibilities or duties as the

11 environmental control specialist?
12 A. I handle all -- basically all the environmental work for
13 the company, deal with all the regulatory agencies, whether that
14 be state, local, federal, provide safety training for the
15 employees.

16 Q. What is UAP Richter?

17 A. It is a agrichemical wholesale and retail distribution
18 company.

19 Q. Where does it operate?

20 A. We operate -- UAP Richter itself operates in three
21 states: Illinois, Indiana and part of Missouri. We have several
22 different retail and wholesale locations throughout those three
23 states.

24 Q. What's your prior experience in this field, the

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1 agricultural chemical regulation?

2 A. Prior to coming to work for the UAP Richter I worked 10
3 years for the Department of Agriculture specifically with the
4 agrichemical containment program.

5 Q. Was that the Illinois Department of Agriculture?

6 A. Correct, the Illinois Department of Agriculture, yes.

7 Q. And what was the program that you're describing? Tell
8 us more.

9 A. It would be the agriculture containment that came out in
10 1990 when all the agrichemical facilities were to build secondary
11 containment structures for their bulk chemical and storage areas,
12 liquid fertilizer tank storage areas, package chemical
13 operational pads. It would be Illinois Administrative Code Part
14 255 is the group.

15 Q. And you were enforcing those?

16 A. Correct. I was a field inspector for the Illinois
17 Department of Agriculture.

18 Q. And what was the goal of the program? What was its
19 purpose literally?

20 A. To -- to -- It initially was to go out and outreach to
21 the agrichemical companies, the retailers and that, to make sure
22 that we got the secondary containment structures built in

23 accordance with Part 255, and there was a -- and there is a
24 permitting process jointly between the Department of Ag and IEPA

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1 to where the permits are -- or plans are submitted to the
2 Department and the Agency on how the secondary containment

3 structures were to be built. This is done to ensure that the
4 structures are to be built in accordance with Part 255.

5 After all the structures were built, my main function then
6 was to do more a less inspection at least once a year in the
7 locations in my area to ensure that they're still being operated
8 in accordance with their permit and the Part 255 group.

9 Q. And are you familiar with the UAP Richter facility in
10 McDonough County, Illinois, the subject of the petition here?

11 A. Yes.

12 Q. And what is your familiarity? How is it that you're
13 familiar with that operation?

14 A. I -- Actually when I did work for the Department of
15 Agriculture I did work with this location also with their -- when
16 they did their permitting. But now with this company I've been
17 to this location several times also and am familiar with the
18 location.

19 Q. Would you explain to the hearing officer what this
20 facility is about, what it does, what kind of operations occur
21 there?

22 A. This is what we would call a full scale retail facility
23 that offers a host of agrichemical products or agriproducts to

24 farmers. They do full custom application, they store bulk

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1 chemicals, liquid fertilizer and then they have package chemicals
2 at this location to where then they provide -- they have
3 application equipment also that they do full application out in

4 the field or can provide the product to the farmer in a package
5 or bulk form to where he can apply this product for himself out
6 on the cropland.

7 Q. Is it located in a primarily agricultural area?

8 A. Yes, it's in a rural area just about two miles south of
9 a town called Blandinsville.

10 Q. And where is McDonough County?

11 A. McDonough County is up by Macomb, if you're familiar.

12 Q. And what do farmers do when they come to this facility?
13 Help me out with what the agricultural community is using this
14 facility for?

15 A. They would use this as a place to purchase their
16 products, that would be the purchasees that are to purchase
17 package chemicals, insecticides, herbicides, fungicides, products
18 along that line, to get crop recommendations from our -- from our
19 field personnel, crop scouting, they use it for a whole host of
20 things to make their farms and their places more profitable.

21 MR. ROOSEVELT: May I approach the witness, please?

22 HEARING OFFICER LANGHOFF: Yes.

23 MR. ROOSEVELT: Thanks.

24 Q. (By Mr. Roosevelt) If I may show you what's been marked

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1 as exhibit -- Petitioner's Exhibit No. 1. What -- Could you show
2 us -- tell us what that is, sir?

3 A. This would be the actual chemical building at the
4 location where -- this is where the -- kind of the hub of the
5 facility where they've got bulk chemicals in a secondary
6 containment area, we've got the package chemicals storage area,

7 where it would be contained, the operational or what we call a
8 loading pad to where the application vehicles would pull in and
9 then be filled to then go out into the cropland to apply the
10 products. The operational area is where also transport trucks

11 would come and unload products into the bulk chemical tanks.
12 Q. The operational area is to the left and has a diamond
13 shape in it; is that correct?
14 A. Correct, correct.
15 Q. And that's not the subject of the petition today?
16 A. Correct.
17 Q. The area that you described as a bulk area is a square
18 with nine circles in it; is that correct?
19 A. Correct.
20 Q. What is those -- What do those circles depict?
21 A. Those represent bulk chemical tanks.
22 Q. And approximately how large are those chemical tanks?
23 A. They would be at that location anywhere from probably
24 1,500 gallon up to probably 3,000 gallon in capacity there.

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1 Q. Is that a matter of this petition or contested here
2 today --
3 A. No, it is not.
4 Q. -- in any regard? The -- There is then an L-shaped area
5 right next to operational and the bulk area, describe for us
6 what's in that L-shaped area?
7 A. This would be the package chemical storage area. It
8 would store containers in sizes from one gallon jugs up to two
9 and-a-half gallon jugs to 15 gallon, to what we would call kegs,
10 to 30 gallon barrels and maybe up to mini bulk containers that
11 are typically around 210 gallon capacity, at most up to 300
12 gallon in capacity. There would also be bagged product in this
13 area, bagged insecticide, things along that line.
14 Q. Is it the L-shaped area that you described the area in
15 question here?
16 A. Yes, it is.
17 Q. And we're arguing about the structure overhead; is that
18 correct?
19 A. Correct.
20 Q. Describe the structure overhead? What is it composed
21 of?
22 A. It is a solid steel, structured building. It is a steel
23 framed structure with then metal corrugated sheeting outer
24 surface. Just identical to the area that is over the operational
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1 area on the left and over the bulk chemical area there.
2 Q. What, if any, protection does it afford from the
3 elements from weather?
4 A. It keeps out -- out all of the elements, all of the
5 rain, the wind, the snow. It prevents any outside precipitation
6 from entering the structure.
7 Q. You've described various in this area in question what's
8 contained the mini bulk, etc., what's in the mini bulk containers
9 and the other kinds of containers there?
10 A. It would be insecticides, some fungicides, and mainly
11 herbicides which would be in those containers.
12 Q. And in what form would those be? Dry, wet or some

13 combination thereof?
14 A. Majority of it would be liquid but there would be some
15 dry.
16 Q. And, again, what kind of packages are contained in that
17 area?
18 A. These would be the -- You mean size wise or --
19 Q. Or by their -- both by size and by character?
20 A. One gallon jugs would be typically a plastic one gallon
21 container, then in a cardboard box a lot of two and-a-half gallon
22 containers are a plastic jug that are in a cardboard box also.
23 Bag material is usually in a type of a poly plastic bag now on a
24 pallet which would be shrink wrap. A 15 gallon keg is usually an
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1 aluminum style container. A mini bulk container is the 210
2 gallon containers are typically poly type container, and then our
3 300 gallon mini bulk containers, those are typically more of a
4 stainless steel type of a container.
5 Q. Operationally within this subject area that's the
6 subject of this petition, what's occurring within those
7 containers?
8 A. In that particular area, that is a storage area for

9 those. That's where -- where trucks have come in and we've
10 offloaded products from off of transport trucks. We then store
11 the containers within that area until they are then purchased by
12 a farmer and then are loaded on their vehicle and taken off and
13 used, or unless they are used within our operation itself.

14 Q. Based upon your training, experience and familiarity
15 with the facility, what is the purpose of the overhead structure
16 that's the subject of this contest?

17 A. The purpose of it would be to keep out the outside
18 precipitation, whether that be rain, whether that be snow, you
19 know. It would also hold down on the winds but it is to keep
20 outside precipitation away from the product and out of the
21 contained structure.

22 Q. What, if any, pollution threat does that invasion of
23 outside weather factors, including rain, present for this
24 facility in this area?

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1 A. If it is -- if the rain water were to get in there, then
2 we would have to contain that rain water and then be able to
3 dispose of it or have a way of land applying that product.

4 Q. What is the design limit for rain water?

5 A. If a -- if a structure was to be left outside, you
6 always have to account for a 6 inch rainfall. The way the State
7 of Illinois Administrative Code Part 255 has in their rule, as
8 long as this structure is under roof for a package chemical area,
9 you need to be able to hold the volume of your largest container
10 that would be in there plus any displacement that the other
11 containers may take up.

12 Q. Then in designing this facility and in maintaining it,
13 why then place it under roof in this configuration?

14 A. For a -- for a couple reasons, but the main reason is

15 you do not have to account for the 6 inch rain fall in your
16 structure when building it because I would -- you would need a

17 lot more volume than concrete wise or to -- to hold that. But
18 the main reason then is to where you don't have the daily, or I
19 don't say daily, but the operation or the management of dealing
20 with the rain water or handling the rain water. These are --
21 this is a very large area and even a 1 inch rain would create a
22 vast amount of rain water that would then have to be handled
23 and/or then disposed of.

24 Q. And are there risks in so handling it?

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1 A. Yes, there would be. There's always a -- the fear if
2 there was contamination there, if there happens to be a bag that
3 was broke or leaked that you now have some sort of contaminated
4 water, then you have to dispose of that water.

5 Q. Is there any risk known to you that in a 6 inch rain
6 that could be exceeded in certain instances that would present
7 problems?

8 A. Yes, a 6 inch rain is a 24 hour, 25 year flood and that
9 was the rules they went with but, yes, there have been in the

10 last 10 to 15 years, there is a state that has had more than a
11 6 inch rainfall.

12 Q. In your opinion is this then the safest and most
13 appropriate means to handle the threat of rain water
14 contamination in issues with pollution?

15 A. If you mean by putting a roof over --

16 Q. Yes.

17 A. -- or building the structure enclosed, by all means,
18 yes.

19 Q. Are there other factors and considerations other than
20 rain water which would dictate this design or are you already
21 including rain, wind influence?

22 A. The rain water issue would be the main reason but the
23 security is also a concern at any location also. By -- by

24 placing a building over -- over an area, you're -- you help

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1 impede people from entering a structure. If it is -- if the
2 doors are installed correctly and if there would be proper locks
3 on all of the -- on all of the doors.

4 Q. Would you contemplate vandalism in the acts of spreading
5 this material across the countryside by vandalism to be a threat?

6 A. By far that's always a concern. If someone were to
7 break into your facility, you would not know if they were going
8 to -- what their motives were. Is it to steal products to use
9 for themselves or is it to steal products to sell, is it just to
10 go contaminate or pollute. The post 9/11 is always a concern now
11 with terrorist activities with active terrorism.

12 Q. You -- you have been to this facility then in

13 preparation for -- well, in your course of your work --
14 A. Correct.
15 Q. -- repeatedly; is that correct?
16 A. Yes.
17 MR. ROOSEVELT: May I have just a moment, please?
18 HEARING OFFICER LANGHOFF: Certainly.
19 Q. (By Mr. Roosevelt) I want to ask you on the mini bulk
20 containers which are 200 or so gallons to sum up?
21 A. Correct.
22 Q. Are they moved in and out of that facility quite a bit?
23 A. Yes, they would be.
24 Q. And then the other stored chemicals are also moved in
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1 and out quite commonly; is that right?
2 A. Correct, correct.
3 Q. Does it structurally have -- What, if any, safety factor
4 does that lend in helping when you're moving products in and out?
5 A. The structure itself would, if the product is being
6 loaded or unloaded there. You're always protected from the
7 elements then while the containers are being loaded and offloaded
8 off of vehicles.
9 Q. Thank you, sir.
10 A. Thank you.
11 MR. ROOSEVELT: And that completes my questions.
12 HEARING OFFICER LANGHOFF: Thank you. Ms. Moreno.
13 MS. MORENO: Mr. Hearing Officer, if I could have just a
14 minute.
15 HEARING OFFICER LANGHOFF: Certainly.
16 MR. ROOSEVELT: May I while -- I need to ask him one more
17 -- a couple of questions about Exhibit 1 if I may.
18 HEARING OFFICER LANGHOFF: Just a second. Let her get done
19 with her conversation.
20 MS. MORENO: Go ahead.
21 HEARING OFFICER LANGHOFF: Thank you. Go ahead,
22 Mr. Roosevelt.
23 Q. (By Mr. Roosevelt) Does Exhibit 1, does that faithfully
24 and accurately portray the layout and design of the subject in
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1 question?
2 A. Yes, it does.
3 MR. ROOSEVELT: All right. Thank you.
4 HEARING OFFICER LANGHOFF: And, Mr. Roosevelt, for the
5 record, that is part of the Agency record, is it not?
6 MR. ROOSEVELT: It is.
7 HEARING OFFICER LANGHOFF: It would be labeled page 7 if it
8 had a number on it?
9 MR. ROOSEVELT: That is correct, yes.
10 HEARING OFFICER LANGHOFF: And are you familiar with the
11 Agency records?
12 MR. ROOSEVELT: Yes.
13 HEARING OFFICER LANGHOFF: Are these two drawings the same?
14 Are they the same --
15 MR. ROOSEVELT: They in fact are. We noticed that one is a

16 better quality than reproduction but they are the same.

17 HEARING OFFICER LANGHOFF: Thank you.

18 CROSS EXAMINATION

19 Q. (By Ms. Moreno) Yeah, I -- Mr. Fricke, I have a few

20 questions. You mentioned that you have dry products that are
21 stored in bags, would you explain that a little more with that?

22 A. Some -- some products that we would handle typically is
23 a corn insecticide come in 50 pound bags, and those usually come
24 on pallets and it is 40 bags per pallet. And they can be stored

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1 within the area also, or were stored within this, or stored in
2 the package chemical area.

3 Q. But corn insecticide would be the only product that you
4 would expect that would be in dry form?

5 A. For the most part, yes, yes. They're really at this
6 location very little, if any, other products that they would have
7 there would be in a bag form.

8 Q. Now I believe you described a bunch of different types
9 of containers that would be stored in this area. Now generally
10 speaking can we assume that these containers will be closed?

11 A. Yes.

12 Q. And they're ready for somebody to come pick up?

13 A. Correct.

14 Q. So would we expect they would be sealed, for example?

15 A. Correct.

16 Q. Okay. I would like, if I could, approach the witness.
17 I'm looking at the Agency records and I'd like to ask -- hand him
18 the portion which is the application -- the application that was
19 submitted. Now did you work on the application at all, by the

20 way?

21 A. No, I did not.

22 Q. Okay. There are a series of pictures beginning on, I
23 guess, there's a page 1 at the bottom description of the
24 properties and goes on, is there a picture of the inside of the

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1 L-shaped area that we're talking about?

2 A. Yes, this picture here, the -- on what would be page 4
3 would be the L-shaped area. And if lining it up with said
4 picture, the back left of the picture, on page 4 would be the
5 bottom right corner, the picture would have been taking -- trying
6 to think.

7 HEARING OFFICER LANGHOFF: It would be easier if you would
8 just draw a blue area, but I understand, but if the Board wants

9 to take a look at it, just draw a blue area just so we can see
10 where the picture was taken.

11 A. About like that.

12 Q. (By Ms. Moreno) Okay. Now is this -- is this area
13 enclosed by wall?

14 A. Correct.

15 Q. So it would be -- could we describe it as kind of
16 similar to a warehouse and then it's got walls and a roof?

17 A. Yes.

18 Q. Okay. A couple more things. Referring to your -- the
19 exhibit which is the diagram of the inside of this building, I
20 have a question. Looking at the square, the second square from

21 -- the square on the left, second from the bottom, which is close
22 to the bulk chemical storage --

23 A. Okay.

24 Q. I'm a lawyer. I'm not an engineer. I don't read
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1 blueprints very well.

2 A. Okay.

3 Q. I see something that is internal. I think it says
4 internal floor sump, could you explain what that is?

5 A. Okay. Make sure I -- You mean this one right here?

6 Q. Yeah.

7 A. Okay. Yeah, what this -- The operational pad. The far
8 area on the left is designed for a two-bay loading or unloading
9 system. As you see on both sides of the operational area there
10 is a sump on both sides of that area. There is a -- The one
11 which you have pointed out which would be for the right loading

12 pad. There is one across the way onto the left for the left side
13 loading pad. Both of these areas slope down away from the center
14 to both sides to a sump area. This structure would be a low area
15 where the liquid would float to and then that would be where a
16 sump pump could be placed and then the liquid recovered from that
17 area.

18 Q. Okay.

19 A. It's like -- like a two-bay car wash, let's say, rather
20 than --

21 Q. Oh, okay.

22 A. -- rather than -- rather than similar like a car wash,
23 the low area is right underneath your car right in the center of
24 the pad. This is off to the side where it's a lot more easy to

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1 -- easier to, and more accessible, to place a sump pump down into
2 to be able to recover the liquid.

3 Q. Okay. I apologize, Mr. Fricke. I think I've confused
4 myself here.

5 A. Okay.

6 Q. What I'm really -- was really talking about is this sump
7 over here.

8 HEARING OFFICER LANGHOFF: Which is the sump that is
9 located in the part of the L-shape part?

10 MS. MORENO: The L-shape.

11 HEARING OFFICER LANGHOFF: You can go ahead and circle that
12 if you would on Exhibit 1 there. Thank you.

13 Q. (By Ms. Moreno) What can you tell us about that sump,
14 if anything?

15 A. It's tough to make out what the actual plan does say
16 about it.
17 HEARING OFFICER LANGHOFF: I think it's a little clearer on
18 the next page of the record which is a clear representation of
19 the same drawing; is that correct, Mr. Roosevelt?
20 MR. ROOSEVELT: Yes, Your Honor. If I may, I handed a copy
21 to him.
22 HEARING OFFICER LANGHOFF: And that's the next page that
23 would be labeled eight, if it had a number on it?
24 MS. MORENO: Yes, correct.
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1 A. This would be a -- what we would call a sump or a low
2 area within the storage area to where if there was a spill or if
3 there was any type of liquid within this area, it would flow to
4 this point and whereby allow for easy accessibility in using the
5 sump pump to be able to recover any of that liquid.
6 Q. (By Ms. Moreno) So that if --
7 A. I'm sorry. Go ahead.
8 Q. So if there were a spill, for example, in this area, it
9 would go to that sump. And then when you say recovered, do you
10 know where it would be pumped out of?
11 A. It would be pumped out. And if it was -- if it was one
12 container there that was -- that happened to spill, if it could
13 be pumped out and pumped back into that container and recovered
14 as pure product, that would be the fashion that it would be --
15 that would be done.
16 Q. Now you stated that you were involved or familiar with
17 the Department of Agriculture regulations and the requirements
18 for secondary containment, do you have any knowledge of what
19 things were like before those regs were adopted?
20 A. Other than basic knowledge of living in a rural
21 community.
22 Q. Okay. So you didn't work --
23 A. Prior to that, no.
24 Q. Okay. Oh, um, as part of your duties do you -- are you
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1 concerned -- or do you have anything to do with product quality?
2 Is that something that you're concerned about? I mean, I'm
3 asking in terms of since you're the environmental guy, do you
4 also -- do you also have knowledge of the product, actual
5 product, and regulations and things that may apply to the product
6 itself? Am I asking the right guy in other words?
7 A. Yeah, probably to some extent. I guess it would have to
8 be, I guess, you know, more specific to know maybe what you would
9 be looking at or dealing with.
10 Q. One of the things that I'm curious about is the effects
11 of not to say if the bags were stored out in the open or in a
12 place where water -- rain water or whatever could get to them,
13 would this -- would the fact that the subject were to damp have
14 an effect to the quality of the product, if you know?
15 A. For -- for a bag product if -- if dampness or say they
16 were to sit out in a rainfall or something along that line, that

17 could maybe affect product quality but that would probably be
18 more speculating than I would say.
19 Q. One other thing. Is this L-shaped area, is this heated
20 at all?
21 A. Yes, the entire structure would be heated.
22 Q. The entire structure is heated?
23 A. Yes.
24 Q. Does it have any windows or anything?
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1 A. No, there are no windows in the -- just what windows
2 would be in the overhead doors on the loading -- in the
3 operational area, they do have windows in that.
4 Q. Okay. Do you know why it's heated?
5 A. For -- Some products need to be maintained above a
6 freezing temperature, above -- some of the products that we would
7 store would need to be maintained above, usually it's 40 degrees
8 Fahrenheit, just to maintain the product integrity.
9 Q. So those are the type products that you couldn't store
10 outdoors, you'd have to have --
11 A. Correct. And those could be either package chemicals or
12 a lot of our bulk chemicals that we have in the bulk chemical
13 type that they we would be needing to heat those also.
14 MS. MORENO: Okay. Thank you very much.
15 A. Okay.
16 HEARING OFFICER LANGHOFF: Thank you. Mr. Roosevelt, any
17 redirect needed?
18 MR. ROOSEVELT: No, thank you.
19 HEARING OFFICER LANGHOFF: Thank you, Mr. Fricke.
20 THE WITNESS: Do I leave these here?
21 HEARING OFFICER LANGHOFF: Yes.
22 MR. ROOSEVELT: I needed to make a decision whether to call
23 a Mr. Turini, if needed.
24 HEARING OFFICER LANGHOFF: Sure. We'll take two minutes.
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1 (A short break was taken.)
2 MR. ROOSEVELT: I would like to call John Turini,
please.
3 Sir, would you step up. Would you state your name, please?
4 HEARING OFFICER LANGHOFF: Would you swear the witness,
5 please.
6 MR. ROOSEVELT: Sorry.
7 (Whereupon the witness was sworn by the Notary Public.)
8 DIRECT EXAMINATION
9 Q. (By Mr. Roosevelt) Would you state your name, sir?
10 A. John R. Turini.
11 Q. What is your occupation?
12 A. I'm the general manager for Pearls Ag Services
13 (phonetic).
14 Q. You operate a agrichemical operation?
15 A. Yes, we have actually eight locations, six of which are
16 bulk chemical storage facilities.
17 Q. Similar to the one in question here you've heard
18 testimony on?

19 A. Yes.
20 Q. Where is your facility located?
21 A. We're north central Illinois. We're between Peoria and
22 La Salle basically.
23 Q. You're familiar -- What's your position again with your
24 firm?
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1 A. The general manager.
2 Q. You're responsible for day-to-day operation then?
3 A. Of all the plants, yes.
4 Q. You've heard the discussion of mini bulk containers?
5 A. Yes, sir.
6 Q. And what is your understanding as to the requirement for
7 handling empty mini bulk containers as described earlier?
8 A. Under the new regulations that our industry abides by
9 all mini bulk containers, empty even, are to be stored under roof
10 and kept away from precipitation.
11 Q. And are typically in a storage area such has been
12 described here, is that where you would keep your empty
13 containers?
14 A. Yes, sir, we do.
15 Q. Have you, in fact, been cited for not keeping them at
16 one point?
17 A. One of our plants approximately 12 months ago was cited
18 for -- during the season, the spring season, having empty mini
19 bulk containers sitting outside the building, yes.
20 Q. Has there been a change in the industry since these
21 regulation and in the types of packaging and the storage
22 facilities were stored?
23 A. Prior to the rules and regulations going in in 1990, it
24 was -- it was common to -- to have your mini bulk containers, you
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1 know, adjacent to your chemical operation area. In a lot of
2 cases if you didn't have a building, you stored them outside
3 right along the diking for that outside chemical operation.
4 Q. And have you, since the advent of the regulations
5 described here, put all those mini bulks under roof?
6 A. Yes, sir.
7 MR. ROOSEVELT: That completes my questions, sir.
8 HEARING OFFICER LANGHOFF: Thank you, Mr. Roosevelt.
9 CROSS EXAMINATION
10 Q. (By Ms. Moreno) I just have one question. Mr. Turini,
11 do you have any personal knowledge of what goes on in the
12 L-shaped area at UAP Richter that we've been talking about?
13 A. That specific plant, no, ma'am, I've never visited.
14 MS. MORENO: Okay. Thank you.
15 MR. ROOSEVELT: Thank you, sir.
16 HEARING OFFICER LANGHOFF: Thank you, Mr. Turini.
17 MR. ROOSEVELT: Would you spell your last name for us,
18 please?

19 MR. TURINI: T-U-R-I-N-I.
20 HEARING OFFICER LANGHOFF: And do you have another witness?
21 MS. MORENO: Mr. Hearing Officer, could we have a
22 five-minute recess, please?
23 HEARING OFFICER LANGHOFF: Certainly. We'll be back at
24 seven to 11.
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1 (A short break was taken.)
2 HEARING OFFICER LANGHOFF: Do you have another witness,
3 Mr. Roosevelt?
4 MR. ROOSEVELT: No, sir. That completes our witnesses. I
5 know that I marked Exhibit 1. It's probably already part of the
6 record but if I need to move its introduction, I'd like to do so.
7 HEARING OFFICER LANGHOFF: I'd like you to since it has a
8 couple of marks on it.
9 MR. ROOSEVELT: Yes, I may. I previously showed it to
10 counsel.
11 MS. MORENO: Right. And I certainly have no objection.

12 HEARING OFFICER LANGHOFF: Okay. Exhibit 1 is admitted.
13 Okay. Ms. Moreno, do you have an opening statement?
14 MS. MORENO: I would like to make a brief statement. The
15 Agency made clear its position in our recommendation to the Board
16 that the primary purpose of the -- this building, or portion of
17 the building, and the roof is not pollution control but rather
18 product storage integrity and secondarily the security, and we --
19 we stand on that. And we believe that there is sufficient
20 difference between this portion, the L-shaped portion, and the
21 other portion, that we did certify both in terms of the
22 regulatory regimens to which they are subject to what goes on
23 there and the possibility of environmental contamination that the
24 tax treatment of the L-shaped portion of the building as not a
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1 pollution control equipment or device is warranted. Thank you.
2 HEARING OFFICER LANGHOFF: Thank you. Mr. Roosevelt, any
3 closing or would you like to reserve that for a brief?
4 MR. ROOSEVELT: If I could reserve it, and whatever would
5 be helpful to the hearing officer, but if you -- if a brief would
6 be helpful, and, if so, it will be brief, but I'd be happy to
7 supply the same if that would be helpful.
8 HEARING OFFICER LANGHOFF: And I'd like to go off the
9 record at this time for just a minute to discuss the submission
10 of briefs to the Board.
11 (A discussion was held off the record.)
12 HEARING OFFICER LANGHOFF: Okay. We've just had an
13 off-the-record discussion regarding the filing of post-hearing

14 briefs and the parties have agreed to a briefing schedule. I'll
15 go ahead and read that schedule into the record.
16 The transcript of this proceedings will be available from
17 the court reporter by October 7th, 2002. I will establish a
18 public comment period of 14 days according to the Board's

19 procedural rules. UAP Richter's brief will be due by November
20 6th, 2002, and the mailbox rule will apply. The Agency's brief
21 will be due by December 6th, 2002, and, again, the mailbox rule
22 will apply.

23 The transcript is usually put on the Board's website within
24 a few days of it's availability. And I would just like to note
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1 the website's address is www.ipcb.state.il.us.

2 Any post-hearing comments by the public must be filed in
3 accordance with Section 101.628 of the Board's procedural rules.
4 Public comments must be filed by October 8th, 2002. The mailbox
5 rule set forth at 35 IL Admin Code 101.102(d) and 101.144(c) will
6 be applied to any post-hearing public comment filings. Also
7 Ms. Moreno has indicated that if the Board's copy of the Agency
8 record does not have and include color photographs, that she will
9 be forwarding to the Board and there's no objection from
10 Mr. Roosevelt on that matter. Is there anything further from the
11 parties before we conclude today?

12 MS. MORENO: No.

13 MR. ROOSEVELT: No, thank you, sir.

14 HEARING OFFICER LANGHOFF: At this time I want note again
15 for the record that there are no members of public present that
16 want to make statements on the record. I'm required to make a

17 statement as to the credibility of witnesses testifying today
18 during this hearing.

19 The statement is based upon my legal judgment and
20 experience and, accordingly, I state that I found all of the
21 witnesses testifying today to be credible. Credibility should
22 not be an issue for the Board to consider in rendering its
23 decision in this case.

24 At this time I'll conclude the hearing. It's Tuesday,

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1 September 24th, 2002, at approximately 11:02 in the morning. We
2 stand adjourned. Thank everybody for their participation and
3 wish everyone a good day and a safe drive. Thank you.
4 (The hearing was concluded at 11:02 a.m.)
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STATE OF ILLINOIS COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 33 pages comprise a true, complete and correct transcript of the proceedings held on the 24th of September A.D., 2002, at the Illinois Pollution Control Board, 600 South Second Street, Suite 403, Springfield, Illinois, Illinois, in the case of UAP Richter Company (McDonough County) (Property Identification Number 08-000-071-00) vs. IEPA, in proceedings held before Hearing Officer Steven Langhoff, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 29th day of September A.D., 2002.

Beverly S. Hopkins

Notary Public and
Certified Shorthand Reporter and Registered Professional Reporter
CSR License No. 084-004316

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