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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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|-------------------------------------|---|---------------|
| DONALD McCARRELL and ANN McCARRELL) |) | |
| |) | |
| Complainants, |) | |
| |) | |
| vs |) | No. PCB 98-55 |
| |) | |
| AIR DISTRIBUTION ASSOCIATES, INC.,) |) | |
| |) | |
| Respondent. |) | |

The following is the transcript of a hearing held in the above-entitled matter taken stenographically by MICHELE J. LOSURDO, CSR, a notary public within and for the County of DuPage and State of Illinois, before BRADLEY P. HALLORAN, Hearing Officer, at 404 North Wood Dale Road, Wood Dale, Illinois, on the 28th day of August, 2002, A.D., commencing at 10:00 a.m.

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APPEARANCES:

HEARING TAKEN BEFORE:

ILLINOIS POLLUTION CONTROL BOARD
BY: MR. BRADLEY P. HALLORAN
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Appeared on behalf of the Complainants.

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1 HEARING OFFICER HALLORAN: Good morning,
2 everyone. My name is Bradley Halloran. I'm with the
3 Illinois Pollution Control Board. I'm a hearing officer
4 and I'm assigned to this matter entitled Donald
5 McCarrell and Ann McCarrell versus Air Distribution
6 Associates, Inc.

7 Today's date is August 28th in the year 2002.
8 This matter has been noticed pursuant to the Board
9 regulations and will be conducted in accordance with
10 sections 103.212 and section 101 subpart F of the
11 Board's procedural rules.

12 This matter involves a citizen enforcement
13 alleging a violation of section 21A of the act and there
14 doesn't appear to be any members of the public here;
15 however, if they were, they would be allowed to testify
16 subject to cross-examination.

17 I also want to note for the record I will not be
18 making the ultimate decision in the case. That
19 decision will be made by the seven members of the
20 Illinois Pollution Control Board. My job is to ensure
21 an orderly transcript and a clear record and rule on any
22 evidentiary matters that may arise.

23 With that said, it appears that the respondent or
24 its attorney is not present. Respondent has been

1 advised on a plethora of occasions through various
2 orders that it must be represented by an attorney.
3 Respondent has chosen not to retain an attorney
4 apparently.

5 To that end, we will proceed pursuant to section
6 101.6080 of the Board's general provisions entitled
7 default. With that, the complainant must prove its
8 prima facie case in order to prevail.

9 With that said, Mr. Pieper, would you like to
10 introduce yourself?

11 MR. PIEPER: Yes. For the record, Your Honor, my
12 name is John Pieper. I'm appearing this morning on
13 behalf of the complainants Ann McCarrell and Don
14 McCarrell. We have three witnesses that we intend to
15 call this morning as well as introduce various
16 documents.

17 HEARING OFFICER HALLORAN: Thank you.

18 MR. PIEPER: Preliminarily, Your Honor, I would
19 have a motion as a consequence of my review of some
20 title issues yesterday with Mr. McCarrell. I would have
21 a motion for leave to amend the complaint to reflect the
22 complainant as being Don McCarrell individually, which
23 he already is, and as trustee under the provisions of a
24 trust agreement known as the Donald W. McCarrell

1 revokable living trust dated December 21st, 1993, and
2 Ann McCarrell individually and as trustee under the
3 provisions of a trust agreement known as the Ann
4 McCarrell revokable living trust dated December 21st,
5 1993.

6 Basically, Mr. McCarrell and his wife were the
7 beneficial owners of the property when it was purchased
8 through a land trust and then they for purpose of estate
9 planning deeded it to these revokable living trusts.
10 The evidence will show that Mr. McCarrell paid all of
11 the costs that we are seeking recovery of today for this
12 enforcement action.

13 HEARING OFFICER HALLORAN: Okay. Thank you. I
14 will take your motion for leave to file an amended
15 complaint with the case and the Board will so decide on
16 your motion. You could also address that, if you wish,
17 in your posthearing brief.

18 MR. PIEPER: Okay.

19 HEARING OFFICER HALLORAN: Thank you. If you
20 have any opening statement, please feel free.

21 MR. PIEPER: Well, in summary -- I'll keep it
22 brief -- in 1993 William Frerichs did a Phase I
23 environmental assessment for Air Distribution
24 Associates. At that time, there were various

1 conversations which Mr. Frerichs had which subsequently
2 are important in the sense that there was contamination
3 found on the property in 1995.

4 On July 15, 1993, the property was purchased by
5 Ann and Don McCarrell through the land trust at the
6 Harris Bank Hinsdale and shortly after that, a company
7 known as the Wilder Binding Company operated by
8 Mr. McCarrell's son, a company that Mr. Don McCarrell
9 started years before, was relocated from Chicago to the
10 property.

11 Mr. McCarrell will talk regarding that issue.
12 Don McCarrell will basically -- excuse me -- Douglas
13 McCarrell, his son, will testify as to the operations of
14 the business and that the fact nothing of a -- that
15 would cause a contamination of the property occurred.

16 Most importantly, Mr. Frerichs will testify
17 regarding his opinions as to the source of the
18 contamination and his observations and communication
19 with various employees.

20 HEARING OFFICER HALLORAN: Thank you, Mr. Pieper.
21 You may call your first witness.

22 MR. PIEPER: I call Don McCarrell. Don, if you
23 would take the chair at the end of the table, please.

24 HEARING OFFICER HALLORAN: Raise your right hand

1 and the court reporter will swear you in, please.

2 DONALD McCARRELL,
3 having been first duly sworn, was examined and testified
4 as follows:

5 DIRECT EXAMINATION
6 by Mr. Pieper

7 Q. Sir, would you please state your name, spelling
8 it for the court reporter?

9 A. Donald W. McCarrell.

10 Q. Where do you reside?

11 A. Westchester, Illinois.

12 Q. And what is your address?

13 A. 11107 Kingston Street.

14 Q. And do you know who Ann McCarrell is?

15 A. She's my wife.

16 Q. And is she the same person that owned the
17 property at 935 North Lively with you?

18 A. Yes.

19 Q. And she is the plaintiff in this action along
20 with you?

21 A. Yes.

22 Q. And prior to 1993, did you operate a binding
23 business in Chicago, Illinois?

24 A. Yes.

1 Q. And what was the name of that business?

2 A. Wilder Binding Company.

3 Q. And in 1993 -- in 1991 did your son assume
4 operation of the binding business?

5 A. Yes.

6 Q. And in 1993 was that business relocated to
7 Wood Dale, Illinois?

8 A. Yes.

9 Q. And did you purchase the property at 935 North
10 Lively, Wood Dale, Illinois and cause same to be titled
11 in a land trust known as Harris Bank Hinsdale, Trust
12 Number L3151 which you were the beneficial owner of?

13 A. Yes.

14 Q. And let me show you what's been marked --

15 MR. PIEPER: Mr. Halloran, I have two documents
16 that are certified copies, one a deed and one a plat of
17 subdivision. I would assume I would need to lay a
18 foundation for those.

19 HEARING OFFICER HALLORAN: No. You may proceed.

20 MR. PIEPER: Okay. Fine.

21 BY MR. PIEPER:

22 Q. Prior to your purchase of the property on
23 July 15th, 1993, did you have occasion to inspect the
24 property at 935 North Lively?

1 A. Yes.

2 Q. And what did you observe when you were there?

3 Did you observe a paint booth?

4 A. Pardon?

5 Q. Did you observe a paint booth?

6 A. Yes.

7 Q. Describe generally what you observed about a
8 paint booth.

9 A. It was in the northeast corner of the building.
10 It was -- they were completely out of the building at
11 the time, but the booth hadn't been removed and they
12 said they were going to get it out as soon as we
13 purchased the building.

14 Q. And after you purchased the building on
15 July 15th, 1993, was the property leased to the Wilder
16 Binding Company, your son's company?

17 A. Yes.

18 Q. And on July 21st, 1994, was an undivided one half
19 interest in the property transferred to the Donald W. --
20 to Donald W. McCarrell as trustee and the provisions of
21 the trust agreement known as the Donald W. McCarrell
22 revokable living trust dated December 21st, 1993?

23 A. Yes.

24 Q. And on the same date, was the other undivided one

1 half interest deeded to your wife's trust?

2 A. Yes.

3 Q. Let me show you what has been marked as
4 Complainants' Exhibit 3 and Complainants' Exhibit 4 and
5 ask if you would look at those documents for a minute.

6 And are those two documents true and correct
7 copies of the original deeds by which you and your
8 wife's trusts, revokable living trusts acquired the
9 total ownership of the property at 935 North Lively?

10 A. Yes.

11 Q. And did you and your wife own the property in
12 that fashion until February 1996 when you sold the
13 property?

14 A. Yes.

15 Q. And are you and your wife, Ann McCarrell,
16 authorized by the trust and the trustee to bring this
17 action for enforcement and recovery for the monies?

18 A. Yes.

19 Q. And basically, when the bindery business was
20 relocated to Wood Dale, who ran the business?

21 A. Douglas McCarrell.

22 Q. From mid August of 1995 when the business had
23 shut operations until February of 1996 when the property
24 was sold, was any business conducted on the property?

- 1 A. From what date?
- 2 Q. Mid August of '95 until you sold it.
- 3 A. No.
- 4 Q. Did you ever -- did you inspect the property
5 periodically during the time period?
- 6 A. Yes.
- 7 Q. Did you ever see any evidence of fly dumping on
8 the property or illegal disposal of anything on the
9 property?
- 10 A. No. I don't think so.
- 11 Q. And are you familiar with the Green Environmental
12 Group and William Frerichs?
- 13 A. Yes.
- 14 Q. And in the fall of 1995, did you hire Green
15 Environmental Group to perform an assessment and
16 clean-up of the property at 935 North Lively?
- 17 A. Yes.
- 18 Q. Let me show you what's been marked as Exhibit
19 Number 5 for identification and ask you if you would
20 look at that document for a minute.
- 21 And do you recognize what those are?
- 22 A. Yes.
- 23 Q. And what are those?
- 24 A. Those are the bills from Green.

1 Q. Did you pay those bill?

2 A. Yes.

3 Q. Let me show you what's been marked as Group
4 Exhibit Number 6 for identification and ask if you would
5 look at that for a moment.

6 A. Yes, my checks.

7 Q. Are those true and correct copies of the canceled
8 checks by which you paid the invoices for Green
9 Environmental?

10 A. Yes.

11 Q. And did the total -- did you and your wife pay
12 Green Environmental the total sum of \$37,261.81 to
13 remove the contaminants from the property at 935 North
14 Lively which the Green Environmental Group found?

15 A. Yes.

16 MR. PIEPER: I have nothing further.

17 HEARING OFFICER HALLORAN: Thank you very much.
18 You may step down.

19 MR. PIEPER: I call Douglas McCarrell.

20 HEARING OFFICER HALLORAN: Would you please raise
21 your right hand and Michele will swear you in?

22 DOUGLAS MCCARRELL,
23 having been first duly sworn, was examined and testified
24 as follows:

1

DIRECT EXAMINATION

2

by Mr. Pieper

3

Q. Sir, would you please state your name, spelling
4 it for the court reporter?

5

A. Douglas S. McCarrell.

6

Q. And are you the son of Donald W. McCarrell who
7 just testified?

8

A. Yes, I am.

9

Q. Where do you reside?

10

A. 1316 Hamilton Avenue, Elmhurst.

11

Q. And directing your attention to 1991, did you
12 assume -- did you become the president and CEO of a
13 company known as Wilder Binding Company?

14

A. Yes, I did.

15

Q. And what was the business of Wilder Binding
16 Company?

17

A. It was a book bindery.

18

Q. Tell me what a book bindery company does in
19 simple terms.

20

A. Contracted by printers and publishers to finish
21 printed products for the market, calendars, books,
22 magazines, manuals, that sort of thing.

23

Q. And are any type of products, solvents, cleaning
24 agents, those type of things ever used in the conduct of

1 a binding company such as you ran?

2 A. The only solvent that would be used would be
3 something -- a safety solvent. It's a product that we
4 bought which is used to degrease punching dyes, degrease
5 and clean punching dye.

6 Q. And did Wilder Binding Company eventually become
7 known as Professional Binding Company, Inc.?

8 A. Yes, they did.

9 Q. And are you familiar with the property at
10 935 North Lively, Wood Dale, Illinois?

11 A. Yes, I am.

12 Q. And it's correct, sir, that on July 15th, 1993,
13 your father purchased the property that housed the
14 binding company you were running?

15 A. Yes. That's correct.

16 Q. And after your dad purchased the property from
17 July 15, 1993, through sometime in September, what was
18 the binding company doing in preparation for its
19 business?

20 A. Cleaning the property, painting walls and all
21 that kind of stuff.

22 Q. And there was substantial electrical work done as
23 well?

24 A. Yes, electrical work.

1 Q. And in September 1993, did the binding company
2 start binding operations?

3 A. Yes, it did.

4 Q. Now, you indicated that there was a solvent that
5 was used. Could you describe more clearly the type of
6 device that was used to clean parts?

7 A. It was a standard commercial parts washer.
8 Basically I believe it's a 25 gallon can at the base of
9 the parts washing bin which is three feet by three feet
10 and maybe about eight to ten inches deep. It has an
11 electric motor, the drain in the middle. There is a
12 hose that is -- a flexible hose that is used to spray
13 the component that you're cleaning where you're cleaning
14 off paper dust, grease or whatever.

15 Whatever is cleaned off goes down through the
16 bottom of the container where there's a filter and the
17 solvent is reused over and over again for a period of I
18 think two years, a year, whatever. I mean, the amount
19 that's used is a very little. The parts that are
20 cleaned are blocks that are maybe three-by-three and
21 there's maybe a dozen pins in there, so I mean it's
22 really --

23 Q. Three-by-three is?

24 A. Three inches by three inches. It's a small

1 puncher. It punches the holes in the paper.

2 Q. And is the solvent recirculated?

3 A. It's recirculated, yes, used over and over again.

4 Q. And at some particular point in time, is the
5 solvent ever changed?

6 A. At some point it would be, yeah.

7 Q. Was it ever changed during the time period that
8 you were in operation of the business from '93 to '95?

9 A. Most likely not because we would have put new
10 solvent in when we moved in there, when we just moved in
11 there in September.

12 Q. But when you did change it, described for the
13 court what the process involved.

14 A. It would be a service contractor that would come
15 and take the container away.

16 Q. And install a new container?

17 A. Correct.

18 Q. And so the solvent was never even disposed of on
19 the property?

20 A. No.

21 Q. And during the time period you were there, was
22 there ever, other than this cleaning stuff, any other
23 type of solvents or anything else stored or used on the
24 property?

1 A. No, there wasn't.

2 Q. And was there anything ever stored outside on the
3 property?

4 A. Yes, there was.

5 Q. What was that?

6 A. That would have been excess wood pallets that we
7 used to bring the material into our facility for
8 finishing.

9 Q. And, in fact, was there any type of chemicals,
10 drums or anything stored outside?

11 A. No.

12 Q. Was there ever, to your knowledge, anything ever
13 spilled, dumped on the property and especially in the
14 northeast corner of the property?

15 A. No.

16 Q. And you're familiar with the remediation that was
17 done on the property?

18 A. Yes.

19 Q. And you're familiar with where that remediation
20 took place?

21 A. Yes.

22 Q. Did you or anyone from your company ever dispose
23 of any type of solvents, cleaning agents, degreasers or
24 anything else at that location?

1 A. No.

2 MR. PIEPER: I have no other questions.

3 HEARING OFFICER HALLORAN: Mr. McCarrell, you may
4 step down. Thank you.

5 MR. PIEPER: I would call Mr. William Frerichs.

6 HEARING OFFICER HALLORAN: You could raise your
7 right hand and the court reporter will swear you in.

8 WILLIAM W. FRERICHS, REPA,
9 having been first duly sworn, was examined and testified
10 as follows:

11 DIRECT EXAMINATION

12 by Mr. Pieper

13 Q. Sir, would you please state your name, spelling
14 it for the court reporter?

15 A. My name is William W. Frerichs, F-r-e-r-i-c-h-s.
16 I reside at 1641 Stonebridge Trail in Wheaton, Illinois.

17 Q. And are you presently affiliated with an
18 organization known as the Green Environmental Group?

19 A. Yes, I am. I'm one of two principals.

20 Q. So you're the owner of that?

21 A. Half owner.

22 Q. And directing your attention to 1993, were you
23 also one of the principals of the Green Environmental
24 Group?

1 A. Yes, I was.

2 Q. So you've been a principal of the Green
3 Environmental Group since 1993 -- since at least 1993 to
4 the present?

5 A. That's correct.

6 Q. And do you hold any special designations that
7 qualify you for remediating property?

8 A. I'm a registered environmental property assessor.

9 Q. And could you explain to the court what a
10 registered environmental property assessor is?

11 A. It is a designation issued by the National
12 Registry of Environmental Professionals dealing with
13 site evaluations. There's required training, three
14 years of experience prior to obtaining it and you have
15 to pass a test. You have to take the continuing
16 education credits each year to continue certification.

17 Q. And during your work experience, did you ever
18 have occasion to conduct -- prior to Green
19 Environmental, did you have occasion to conduct
20 environmental site investigations and hazardous waste
21 investigations?

22 A. Yes. I started hazardous waste investigations
23 while I was with the office of the Illinois attorney
24 general where I trained hazardous waste investigators

1 for the attorney general's office. After that -- after
2 I was with the attorney general's office, I left in
3 1986, I started up my own firm where I conducted
4 environmental research projects and environmental
5 assessments later on.

6 Q. Approximately how many years were you with the
7 attorney general's office or any of the other state
8 agencies dealing with environmental?

9 A. I was ten years within the state working for the
10 Illinois EPA. I was head of the hazardous waste
11 research project for the Illinois Institute of Natural
12 Resources and then I was deputy chief of the attorney
13 general's office in Chicago for environmental control.

14 Q. Approximately how many remediations have you
15 overseen during your career with Green Environmental?

16 A. Approximately 50 remediations.

17 Q. And approximately how many Phase I -- excuse me.
18 That's in your CV.

19 Let me show you what's been marked as
20 Complainants' Exhibit Number 7 and ask if you would
21 identify that document?

22 A. Yeah, that's the short curriculum vitae.

23 Q. You actually have another longer one?

24 A. Yeah, I have a six-page one.

1 Q. And does this summarize your qualifications
2 regarding remediation?

3 A. Yes.

4 Q. In addition to your testimony?

5 A. Right.

6 Q. Are you familiar with the property commonly known
7 as 935 North Lively in Wood Dale, Illinois?

8 A. Yes, I am.

9 Q. In 1993 was the Green Environmental Group engaged
10 by Air Distribution Associates, Inc., the respondent in
11 this action, to perform a Phase I environmental
12 assessment?

13 A. That's correct.

14 Q. Let me show you what has been marked as
15 Complainants' Exhibit Number 8 for identification and
16 ask if you would identify what that document is?

17 A. Yes. This is a copy of the May 1993 Phase I
18 assessment I conducted for ADA.

19 Q. And in preparation for your testimony today, did
20 you have occasion to review your field notes from your
21 Phase I assessment in May of 1993?

22 A. Yes, I did.

23 Q. And as a consequence of that review, did you
24 discover that there was an error contained in the

1 report?

2 A. Yes, I did.

3 Q. And what was that error?

4 A. In the report, I had named trichloroethylene as
5 the label on the drum that was located up in the
6 north -- off of the northeast corner of the 935
7 building. My field notes which are all handwritten
8 notes with a hand sketch indicated 111 trichlor. 111
9 trichlor is trichloroethane.

10 Q. And was 111 trichloroethane one of the
11 contaminants that was discovered in 1995 to be present
12 at the northeast corner of the property?

13 A. Yes, it was.

14 Q. Let me show you what's been marked as
15 Complainants' Exhibit Number 8B and ask if that's a true
16 and correct copy of your field notes containing the
17 handwritten designation of 111 trichloroethane?

18 A. Yes, it is.

19 Q. And was that document created by you in May of --
20 the original of that document created by you in May of
21 1993 as part of your investigation in Phase I?

22 A. Yes. While I was on site, I made this sketch.

23 Q. And let me show you what's been marked as
24 Complainants' Exhibit Number 8A for identification and

1 is that a corrected page from your report showing the
2 change in designation?

3 A. Yes, it is.

4 Q. And did you visit the site on May 4th, 1993?

5 A. Yes, I did.

6 Q. Did you take any photographs?

7 A. I took quite a few photographs.

8 Q. Let me show you four documents that have been
9 marked as Complainants' Exhibits 9, 10, 11 and 12 and
10 ask if you would first review those for a minute and
11 then I'll ask you some questions.

12 A. Okay. Okay.

13 Q. And did you take each of those photographs?

14 A. Yes, I did.

15 Q. And are you familiar -- and those photographs
16 were taken in May of 1993?

17 A. Yes, they were.

18 Q. Could you tell me first of all where Exhibit 9
19 was taken from, what the view of the photograph is?

20 A. Exhibit 9 is looking at the rear of the property
21 which is -- I'm actually facing a little bit southwest,
22 so it would be the east end of the property up by the
23 northeast corner of the building.

24 Q. And what is the significance of Complainants'

1 Exhibit Number 9?

2 A. One of the drums that shows up in this area is
3 the drum that I labeled 111 trichlor on the field notes.

4 Q. And that's the contaminant that ultimately -- one
5 of the contaminants that was ultimately discovered on
6 the property; is that correct?

7 A. That's correct.

8 Q. And is the location of that drum as shown in
9 Exhibit Number 9 the same location or the same proximity
10 to the location of where the contamination was found?

11 A. Yes, it is.

12 Q. Let me direct your attention to Exhibit Number 10
13 and ask if you would look at that for a minute.

14 A. Okay.

15 Q. And what is -- describe what's shown in that
16 photograph.

17 A. It's a close-up of the -- of that same area taken
18 from within the site. The previous picture was taken
19 from the other side of the fence. I approached it from
20 the other street. This one is actually on the property
21 and it shows a close-up area of the -- almost the
22 conterminous for the area that ended up being excavated.

23 Q. And there is a door -- there are two sets of
24 doors that access this location of the building to the

1 outside; is that correct?

2 A. That's correct.

3 Q. And one of those is a regular pedestrian type
4 door?

5 A. Yes, standard 36 or 42 inch industrial door.

6 Q. And as you stand where Exhibit 10 is showing,
7 where would that door be located?

8 A. It's approximately eight feet to my left.

9 Q. Does that photograph also show asphalt -- the
10 edge of the asphalt at that location?

11 A. Yes. Where the asphalt ends from the parking and
12 storage area, that was in between the 955 building and
13 935 building.

14 Q. And the area that's shown where the edge of the
15 asphalt is, in fact, the area that was ultimately
16 excavated and found to be contaminated?

17 A. Yes, it is.

18 Q. And would you please take a look at Exhibit
19 Number 11 and ask what that shows?

20 A. Exhibit Number 11 is a drum that was kept on the
21 outside. There's kind of the paint sludge with some
22 garbage in the bottom. There's paint staining all
23 within the inside of it. This is one of the drums that
24 I noted within the Phase I report located in the

1 northeast section of the parking area between the 935
2 and 955 buildings.

3 Q. And Exhibit Number 12, where was that taken from?

4 A. Exhibit Number 12 is just a little bit -- is just
5 also off of the northeast portion and it shows some
6 minor staining and bare soil.

7 Q. And is that the area that the contamination was
8 found at and found in 1995?

9 A. Yes.

10 Q. Let me show you what's been marked as Exhibit
11 Number 13 for identification and ask if you recognize
12 what that is?

13 A. Yes. Those are my field notes. I believe I
14 identified that before.

15 Q. And this Exhibit 13 contains a designation as to
16 where the photographs were taken; is that correct?

17 A. That's correct.

18 Q. And it shows just a sketch of the building and
19 the location of the building?

20 A. Yes.

21 Q. When you visited the site as part of your
22 environmental assessment in May of 1993, did you have
23 occasion to speak with Ray Zobott vice president of Air
24 Distribution Associates?

1 A. Yes, I did. He took me around.

2 Q. And do you know what his capacity was with the
3 company?

4 A. He was introduced to me as the comptroller.

5 Q. He's reflected I think in your report as the vice
6 president?

7 A. Vice president, yeah. They said that his
8 function was the comptroller.

9 Q. And do you recall what occurred during your
10 conversations and in your visit with him?

11 A. I asked him questions specifically about the
12 painting operations within the 935 building and he said
13 he really wasn't that familiar with that because that
14 wasn't his area and he referred me to one of the
15 employees that was emptying out the 935 building that
16 had worked in the 935 building.

17 Q. And was that an Aaron Siegler?

18 A. That's correct.

19 Q. And did he identify what his responsibilities
20 were for Air Distribution Associations, Inc.

21 A. He was just in charge of -- I got the feeling
22 that he was in charge of maintenance.

23 Q. And do you recall -- could you describe to the
24 court what occurred during your visit with Mr. Siegler

1 and your observations and statements by Mr. Siegler?

2 A. I asked him in terms of what type of painting was
3 conducted on the property within the paint booth and how
4 stuff was done because I was concerned about paint
5 staining around the rear overhead doors and the paint
6 drum out there and the trichlor drum. And he stated
7 that they used solvents and he wasn't really sure what
8 solvents that they used to wash down portions of HVAC
9 equipment that they purchased and assembled for
10 installation on buildings.

11 He stated that the paint depended upon who the
12 customer was, that different customers had different
13 color requirements and sometimes they would assemble
14 systems -- components from different manufacturers with
15 different colors and so they had to make everything
16 uniform.

17 Q. And when you say HVAC system, what do you mean by
18 that?

19 A. Heating ventilation air conditioning systems.

20 Q. And did he explain to you that the business of
21 Air Distribution Associates was the manufacture and
22 refurbishing of air conditioning equipment?

23 A. They didn't manufacture the equipment. They
24 assembled systems to meet specific specifications and

1 loads mainly for commercial buildings, like fast food
2 restaurants were one of the specialty accounts that they
3 serviced.

4 Q. You said washed down with solvents, what do you
5 mean by that?

6 A. He said that they would take rags and actually
7 wipe the surfaces of the equipment prior to painting so
8 that the paint would stick. The types of -- the size of
9 the equipment -- they had some piece of HVAC equipment
10 that was approximately six to seven feet tall and as
11 wide and then they also had duct work that was fairly
12 extensive too that was part of the system.

13 Q. So all of this might have to be washed down prior
14 to being submitted to the paint booth for coloring --

15 A. That's correct.

16 Q. -- or painting?

17 A. That's correct.

18 Q. And at the time you were there, were they
19 actually operating the paint booth?

20 A. No, they were not.

21 Q. And do you know what type of solvents are
22 typically used as degreasers or cleaning agents in
23 industrial applications?

24 A. There's a variety that includes methyl ethyl

1 ketone, trichloroethane, mineral spirits. It really
2 depends on the particular application.

3 Q. And you observed a paint booth where they
4 actually painted the equipment that you talked about?

5 A. That's correct. It was -- the whole paint booth
6 was not present, there was a portion of it. They were
7 in the process of disassembling it.

8 Q. And that was located in the northeast corner
9 inside the building?

10 A. That's correct.

11 Q. And the closest door to that paint booth was this
12 36 or 42 inch door that you described?

13 A. That's correct.

14 Q. And as you walk out that door, what would you
15 find outside?

16 A. That was located right at the edge of the
17 building and a couple feet to the right of the door as
18 you exited, you would actually be exiting north, was the
19 edge of the asphalt for the storage and parking area.

20 Q. Approximately how many feet from the door was the
21 area of contamination found?

22 A. It was found -- it went actually underneath some
23 of the asphalt.

24 Q. And approximately how far was that from the door?

1 A. Within two feet.

2 Q. In 1995 were you engaged by Don McCarrell to
3 perform further investigation on the property at
4 935 North Lively?

5 A. Yes, I was.

6 Q. And as a consequence of that, did you prepare a
7 report on November 7th, 1995?

8 A. That's correct.

9 Q. Let me show you what's been marked as
10 Complainants' Exhibit Number 14 and ask if that's a true
11 and correct copy of that report?

12 A. Okay. This was one of a series of reports. This
13 was the preliminary Phase II study that we conducted.

14 Q. And let me show you what's been marked as
15 Complainants' Exhibit Number 15 and is that a subsequent
16 report that was done on December 1st of 1995?

17 A. Yes, it is, and this was a report that was done
18 to quantify the extent of contaminated soil because
19 under the previous investigation, we had noted that
20 there was some levels that exceeded the clean-up
21 standards and we wanted to be able to define exactly
22 where it was.

23 Q. When you say the clean-up standards, what
24 standards are you referring to?

1 A. Well, at that particular time, we used standards
2 that had been published in 1995 for definition of what
3 constituted a level of contamination. It's different
4 than what's currently in place with the tier of
5 objectives.

6 Q. So those were standards that were applicable by
7 the statute of the Environmental Protection Act; is that
8 correct?

9 A. That's correct.

10 Q. So, in essence, your report discovered that, in
11 fact, contaminants as defined in the report were in
12 excess of the authorized legal limits?

13 A. That's correct.

14 Q. And let me direct your attention to Complainants'
15 Exhibit Number 16 for identification and ask if that is
16 a true and correct copy of the final report which you
17 prepared and is dated January 15th, 1996?

18 A. Yes, it is.

19 Q. And were these reports prepared by you by the
20 Green Environmental Group under your direct supervision?

21 A. Yes, they were.

22 Q. And, in fact, you prepared those reports?

23 A. Yes, and also Laura Gire (phonetic) who was on my
24 staff at that time.

1 Q. And you signed those reports?

2 A. Yes.

3 Q. And, in fact, during the process of the
4 excavation of the property and based upon your
5 experience and education, did you form any opinions as
6 to when the soil became contaminated?

7 A. Yes. We found that the contamination actually
8 went down to a depth of about 16 feet.

9 Q. Why is that significant?

10 A. Some of the soil there was fairly heavy clay
11 soil, so it appeared to have been ongoing for some
12 period of time prior to when we were out there.
13 Actually it became more heavily contaminated further
14 down it went for a while.

15 Q. With respect to the heavy clays, why is that
16 important?

17 A. The heavy clays impede the movement of the
18 contaminants through the soil.

19 Q. So it would take longer for the containments to
20 get to that level?

21 A. That's correct.

22 Q. And describe a little bit about when you were
23 excavating the property what things that were somewhat
24 unusual that you discovered that helped form the

1 opinions that you stated in your affidavit?

2 A. Well, the most unusual aspect was the variability
3 of the contamination that we found whereas we have been
4 before and have been afterwards accustomed to some sort of
5 steady progression of contamination that we could begin
6 to delineate the exact extent of contamination.

7 We found that foot by foot we had variations
8 where it sometimes got dirtier, it sometimes got cleaner
9 and it was never even either in depth or in extent
10 throughout the excavation. It was very irregular.

11 Q. When you say as you went through it, tell us
12 exactly what you did with respect to sampling as you
13 were actually excavating.

14 A. We used a couple different approaches. We used a
15 field photoionization detector to determine where we had
16 fairly high levels of contamination in the soil while we
17 were out in the field and we used the photoionization
18 detector to determine where to stop digging in certain
19 directions. And at the time that we felt that we were
20 clean on the basis of the photoionization detector as
21 well as odor because our odor thresholds are a little
22 bit more sensitive than the PID actually, we took
23 samples and sent them to a laboratory to confirm.

24 Q. And did you actually have to go back out on

1 several occasions and re-excavate because the laboratory
2 analysis was higher than anticipated?

3 A. That's correct.

4 Q. And ultimately was the property excavated and
5 brought into compliance with the standard of the
6 Environmental Protection Act?

7 A. Yes, it was.

8 Q. And did the concentration depth and pattern that
9 you discovered during your excavation lead you to form
10 any conclusions?

11 A. Yes, it did.

12 Q. And what were those conclusions?

13 A. We believed that because of the variability and
14 intermixing of both trichloroethane and mineral spirits
15 that it appeared to be applications of small amounts of
16 solvents over extended period of time over an extended
17 period of days.

18 Q. And do you have an opinion as to whether or not
19 that contamination existed prior to 1993 specifically
20 July 15th, 1993?

21 A. Yes, I do. I think that on the basis of the 1993
22 study that we did, we had identified a need to conduct a
23 Phase II at that time because of spills that were
24 clearly evident and sloppy housekeeping overall around

1 the northeast corner of the building whereas initially
2 we were most concerned about the double doors that were
3 on the east side of the building, the preliminary Phase
4 II sampling indicated that the heavier concentration was
5 north of the double doors and closer to the side door,
6 the 36 or 42 inch door.

7 Q. And during your site visit in September -- strike
8 that.

9 Do you know who occupied the building immediately
10 north of the 935 building?

11 A. Air Distribution Associates.

12 Q. In fact, they owned that building in 1993 when
13 you were first there?

14 A. That's correct.

15 Q. And in 1995 in September or October, did you
16 observe any drums being stored on the 955 property close
17 to or in proximity to the area that the contamination
18 was found?

19 A. No, not in that area. We did note that there
20 were some drums by the 955 building that were located on
21 the southeast portion of that property.

22 Q. Was that near the border with the 935 property?

23 A. Well, the border was still 40 feet away at that
24 particular point.

1 Q. Is trichloroethane typically used as a degreaser
2 in industry?

3 A. It's one of the typical degreasers that's used.
4 I commonly see it used in gallon containers. Some of
5 the manufacturing facilities will go to -- will use
6 trichloroethane for painting small parts and things like
7 that. Usually MEK is preferred because it's less toxic,
8 but in this particular case, there was an empty drum of
9 trichloroethane on Air Distribution property.

10 Q. And did the Green Environmental Group obtain
11 permits for the disposal of the contaminated soil that
12 was excavated on the property?

13 A. Yes, we did. Actually, Waste Management actually
14 handled the things, so Waste Management actually
15 obtained the permit and disposed of it.

16 Q. And so all the contamination of the excavated
17 soil was disposed of in accordance with environmental
18 regulations and applicable state statutes?

19 A. At that time, yes.

20 Q. Let me direct your attention to Complainant's
21 Exhibit Number 5 and ask if you would take a look at
22 that exhibit for a moment.

23 A. Okay. Okay.

24 Q. And that is a true and correct copy of the

1 invoices that you submitted from the Green Environmental
2 Group to Don McCarrell for the remediation of the
3 property at 935 North Lively; is that correct?

4 A. Yes. That's correct.

5 Q. Were these costs necessary to be incurred for
6 remediation of the property?

7 A. Yes, they were.

8 Q. And are you familiar with the rates and costs for
9 clean up that were in effect at the time for
10 remediation?

11 A. Yes.

12 Q. And were the changes in the invoices fair and
13 reasonable and consistent with the charges typically
14 incurred for remediation?

15 A. Yes, they were.

16 Q. And were these paid by Don McCarrell?

17 A. Yes, they were.

18 Q. And are you familiar with the methods of
19 remediation of contaminated soil containing
20 trichloroethane?

21 A. Yes, I am.

22 Q. And was the method of remediation used the most
23 economically and reasonable way to remediate the
24 contamination which you found?

1 A. Yes, it was at that time. We may have explored
2 other options now. Part of the requirements were that
3 the property receive a clean bill of health before a
4 sale could take place. That was one of the reasons that
5 also drove the excavation versus other methods that
6 could have been explored.

7 Q. Let me show you Complainants' Exhibit Number 17
8 and ask if you would look at that for a minute.

9 A. Okay. Okay.

10 Q. And is that the affidavit that you've submitted
11 previously in this cause in conjunction with the motion
12 for a summary judgment?

13 A. That's correct.

14 Q. And apart from the correction that you noted in
15 your report about the trichloroethylene versus
16 trichloroethane, is everything else contained in that
17 affidavit true and correct?

18 A. That's correct.

19 Q. And does that affidavit contain your opinions
20 that you testified here to today?

21 A. Yes, it does.

22 MR. PIEPER: If you would just give me a moment.

23 HEARING OFFICER HALLORAN: We could go off the
24 record.

1 (Discussion had off the record.)

2 MR. PIEPER: At this time, I would move for
3 admission of Complainants' Exhibits 1 through 17.

4 HEARING OFFICER HALLORAN: Complainants'
5 Exhibits 1 through 17 are admitted.

6 MR. PIEPER: And just for the record, I would
7 identify Exhibit 1 and 2 as being certified copies of
8 the -- Exhibit Number 1 is a certified copy from the
9 recorder of deeds of the July 15th, 1993, deed from Air
10 Distribution Associates, Inc., the respondent, to the
11 land trust that Mr. McCarrell testified to and also
12 Complainants' Number 2 is a plat of survey dated from
13 1980 indicating that the owner of the property in 1980
14 was Air Distribution Associates, Inc.

15 HEARING OFFICER HALLORAN: Thank you, Mr. Pieper.
16 Go ahead.

17 MR. PIEPER: You did admit them, right?

18 HEARING OFFICER HALLORAN: I did admit them.

19 MR. PIEPER: I have no other questions of this
20 witness.

21 HEARING OFFICER HALLORAN: Thank you. You may
22 step down. Before I forget, I'm required to make a
23 credibility determination of the witnesses who have
24 testified here today and based on my legal knowledge,

1 observation, et cetera, I find that there are no
2 credibility issues with any of the witnesses that
3 testified here today.

4 Mr. Pieper, are you going to plan to make a
5 closing statement or are you going to reserve that for
6 your posthearing brief?

7 MR. PIEPER: I'll just summarize very briefly. I
8 think the record indicates circumstantially that Air
9 Distribution Associates, Inc., has owned this property
10 at least since 1980 and operated business operations
11 from 1980 at 935 North Lively until July 15th, 1993, or
12 some short period of time before that.

13 The expert testimony indicates as well as the
14 observations and statements by employees of Air
15 Distribution Associates that they ran an operation which
16 used solvents such as were discovered in 1995 and I
17 think it's very clear that during the period from July
18 1993 through 1995, it was absolutely no possibility even
19 that any contamination occurred on the property.

20 I think it's clear that the responsible party for
21 the contamination was Air Distribution Associates, Inc.,
22 or their employees. That's all.

23 HEARING OFFICER HALLORAN: Thank you very much.
24 We could go off the record.

1 (Discussion had off the record.)

2 HEARING OFFICER HALLORAN: We're back on the
3 record. We were discussing posthearing briefs. We've
4 decided that the transcript will be ready by
5 September 10th. With that said, complainants'
6 posthearing brief is due on or before October 11th,
7 respondent's brief, if any, due by November 12th and
8 complainants' reply, if needed, due by November 25th.

9 I think that's it if there's no other motions or
10 comments or issues that need to be addressed. Thank you
11 very much and thanks for all your professionalism.
12 Thank you.

13 MR. PIEPER: Thank you.

14 (End of proceeding.)

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1 STATE OF ILLINOIS)
) SS:
 2 COUNTY OF DUPAGE)

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4 I, Michele J. Losurdo, Certified Shorthand
 5 Reporter of the State of Illinois, do hereby certify
 6 that I reported in shorthand the proceedings had at the
 7 taking of said hearing, and that the foregoing is a
 8 true, complete, and accurate transcript of the
 9 proceedings at said hearing as appears from my
 10 stenographic notes so taken and transcribed under my
 11 personal direction and signed this _____ day of
 12 _____, 2002.

13

14

15

16 Notary Public, DuPage County, Illinois
 CSR No. 084-004285
 17 Expiration Date: May 31, 2003.

18

19

20 SUBSCRIBED AND SWORN TO
 before me this _____ day
 21 of _____, A.D., 2002.

22

 Notary Public

23

24

