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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
RANTOUL TOWNSHIP HIGH SCHOOL	)	PCB 03-042
DISTRICT NO. 193,	)	(Permit Appeal)
	)	
Petitioner,	)	
vs.	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

The following is a transcript of the above-entitled matter taken stenographically before ANN MARIE HOLLO, CSR, RPR, RMR, a notary public within and for the County of Montgomery and State of Illinois. Said hearing was taken on the 18th day of February A.D., 2003, commencing at 9:00 o'clock a.m. at the Illinois Pollution Control Board Hearing Room, Room 403, 600 South Second Street, Springfield, Illinois.

APPEARANCES:

ILLINOIS POLLUTION CONTROL BOARD  
600 South Second Street  
Suite 402  
Springfield, Illinois 62704  
(217) 524-8509  
By: Carol Sudman, Esq.,  
Hearing Officer

Mohan, Alewelt, Prillaman & Adami  
1 North Old Capitol Plaza  
Suite 325  
Springfield, Illinois 62701  
By: Patrick D. Shaw, Esq.  
Appearing on behalf of the Petitioner

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794  
By: John J. Kim, Esq.

Appearing on behalf of the Respondent

12

13 Petitioner's Exhibit Number 1, marked for identification  
14 and accepted into the record -- Page

15

16

17 Petitioner's Exhibit Number 2, marked for identification  
18 and accepted into the record -- Page

19

20 Examination of Donald Grammer

21 By Mr. Shaw -- Page 10, 34

22 By Mr. Kim -- Page 19, 44

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24 Examination of Jay Gaydosh

By Mr. Kim -- Page 49

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HEARING OFFICER SUDMAN: Good morning,  
everybody. My name is Carol Sudman. I'm the hearing  
officer with the Pollution Control Board. This is  
PCB 03-042, Rantoul Township High School, District 193  
versus IEPA.

It is Tuesday, February 18, 2003. We are  
beginning at approximately 9 o'clock a.m.

For the record, although the petitioner is  
located in Champaign County, there was no known public  
interest in this case. Thus I granted the party's

11 request to hold the hearing in Springfield.

12 I'll note for the record that there are no  
13 members of the public present. Members of the public  
14 are allowed to provide public comment if they so  
15 choose.

16 At issue in this case is the IEPA rejection  
17 of the petitioner's high priority corrective action plan  
18 budget regarding petitioner's property at 200 South  
19 Sheldon Street in Rantoul, Champaign County.

20 The statutory decision deadline in this  
21 case is May 5, 2003.

22 You should note that it is the Pollution  
23 Control Board, and not me, that will make the final  
24 decision in this case. My purpose is to conduct the

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1 hearing in a neutral and orderly manner so that we have  
2 a clear record of the proceedings. I will also assess  
3 the credibility of any witnesses on the record at the  
4 end of the hearing.

5 We will begin with opening statements from  
6 all parties. Then we will proceed to the petitioner's  
7 case followed by the EPA's case. We will conclude with  
8 any closing arguments and discuss off the record a  
9 briefing schedule, which will then be set on the

10 record.

11 This hearing was noticed pursuant to the  
12 Act and the board's rules and will be conducted pursuant  
13 to sections 101.600 through 101.632 of the board's  
14 procedural rules.

15 At this time, I would like to ask the  
16 parties to please make their appearances on the record.

17 MR. SHAW: Yes. Patrick Shaw, attorney for  
18 Rantoul Township High School, District Number 193.

19 HEARING OFFICER SUDMAN: Thank you.

20 MR. KIM: John Kim, attorney for the  
21 respondent, Illinois Environmental Protection Agency.

22 HEARING OFFICER SUDMAN: Thank you.

23 Are there any preliminary matters to  
24 discuss on the record?

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1 MR. SHAW: Well, I think as a preliminary  
2 matter, there's maybe a few items of documents that I  
3 believe that we entered as "an agreed." And then there  
4 will be one witness called to testify on behalf of the  
5 school. That's pretty much it.

6 HEARING OFFICER SUDMAN: Okay.

7 MR. SHAW: Do we need to do something  
8 formally to admit the previously filed record from the

9 agency?

10 MR. KIM: I think if we both -- I'm  
11 assuming the parties are jointly asking that the board  
12 accept to admit the record into evidence.

13 MR. SHAW: That's correct.

14 HEARING OFFICER SUDMAN: Yes, I believe  
15 they will.

16 MR. SHAW: And then the second item, which  
17 I believe will also be entered as an agreed supplement  
18 to the record, I'm going to present to the hearing  
19 officer now. It's a document entitled, "Agreed  
20 Supplemental Record."

21 HEARING OFFICER SUDMAN: Okay.

22 MR. SHAW: Containing the six items that  
23 are referenced on the cover sheet.

24 HEARING OFFICER SUDMAN: Okay. I will mark

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1 this as Petitioner's Exhibit 1, and I will accept this  
2 into the record.

3 MR. KIM: I just want to make one comment.  
4 I have no objection to the documents being admitted.  
5 And this is just perhaps more semantics than anything  
6 else.

7 HEARING OFFICER SUDMAN: Would you prefer

8 it be a joint exhibit?

9 MR. KIM: Well, not so much that. I mean,  
10 that's fine, too. It's the Illinois EPA's concern over  
11 the -- this is a minor concern admittedly -- concern  
12 over the caption as the agreed supplemental record, in  
13 that the administrative record that was previously filed  
14 we believe was the correct and complete administrative  
15 record. In other words, that comprised all the  
16 documents that were relied upon and satisfied the  
17 requirements of the board's regulations.

18 These additional documents certainly are  
19 related to the facility in question. They do predate  
20 the decision in question, and they do have some  
21 relevance. And therefore we don't object to the board  
22 considering them as evidence in the case. We just  
23 wanted to note that that objection does not necessarily  
24 mean that we believe that the initial filing of the

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1 administrative record was deficient. But we do not have  
2 any objection to these documents coming in as of  
3 evidence.

4 HEARING OFFICER SUDMAN: Okay. Then in  
5 light of your comments, I will go ahead and label this  
6 as Petitioner's Exhibit Number 1, and I will note that

7 Respondent does not object to this filing.

8 MR. KIM: Thank you for humoring me.

9 HEARING OFFICER SUDMAN: Sure.

10 [Petitioner's Exhibit Number 1 was  
11 marked for identification and was  
12 accepted into the record.]

13 HEARING OFFICER SUDMAN: Would the  
14 petitioner like to give an opening statement?

15 MR. SHAW: I don't think I have an opening  
16 statement prepared. I'll just pass on that.

17 HEARING OFFICER SUDMAN: Okay. Mr. Kim?

18 MR. KIM: Just a very brief statement.

19 The Illinois EPA believes that the decision  
20 that was made in this case was correct based upon the  
21 information presented to it. The decision that was  
22 reached was correct in terms of the application of the  
23 relevant provision of the Environmental Protection Act  
24 of the board's regulations. And as such, we ask that

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1 the board ultimately enter an order affirming our  
2 decision.

3 HEARING OFFICER SUDMAN: Thank you.

4 Mr. Shaw, would you like to go ahead and  
5 present your case please.

6 MR. SHAW: Yes, Madam Hearing Officer. I  
7 have one other document, I guess, to submit.

8 HEARING OFFICER SUDMAN: Okay.

9 MR. SHAW: And this is the discovery  
10 deposition of Jay Gaydosh, I believe, who just walked  
11 into the room here. This is going to be admitted, I  
12 believe, without objection from the agency with the  
13 understanding or expectation that they are free to call  
14 Mr. Gaydosh in part of their case in chief.

15 And also the recognition that there is a  
16 correction sheet that is lying currently loosely inside  
17 of this, and I don't know if you want to staple it or  
18 just leave it like that.

19 HEARING OFFICER SUDMAN: Okay. I will  
20 attach it in some manner. I'm labeling as Petitioner's  
21 Exhibit Number 2 the discovery deposition of Jay F.  
22 Gaydosh.

23 [Petitioner's Exhibit Number 2 was  
24 marked for identification.]

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1 HEARING OFFICER SUDMAN: And, Mr. Kim, you  
2 will be questioning Mr. Gaydosh as part of your case in  
3 chief; is that correct?

4 MR. KIM: That's correct, but we have no



5 objection to the admission of the deposition.

6 HEARING OFFICER SUDMAN: Thank you.

7 [Petitioner's Exhibit Number 2 was  
8 accepted into the record.]

9 HEARING OFFICER SUDMAN: Mr. Shaw, please  
10 proceed.

11 MR. SHAW: I guess currently the only other  
12 thing we have to do is we're going to call Mr. Grammer,  
13 Donald Grammer, to testify. Where would it be easiest  
14 for him to sit?

15 HEARING OFFICER SUDMAN: Probably where he  
16 is, as long as the court reporter can hear him.

17 Mr. Grammer, would you please state your  
18 name and spell your name for the court reporter.

19 THE WITNESS: (Mr. Grammer) My name is  
20 Donald Grammer, G-r-a-m-m-e-r.

21 HEARING OFFICER SUDMAN: And would you  
22 please swear in the witness.

23 THE WITNESS: (Mr. Grammer) I will not  
24 swear, but I will affirm and promise to tell the truth.

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1 [Witness was duly affirmed.]

2 HEARING OFFICER SUDMAN: Thank you,  
3 Mr. Grammer.

4 MR. KIM: Would it be possible -- sometimes  
5 it's easier for me to try and listen to the witness by  
6 watching him speak as opposed to just listening. If he  
7 sits at the end of the table, I can't really keep track  
8 of what's going on. I'm sorry. I don't mean to  
9 inconvenience you.

10 HEARING OFFICER SUDMAN: Mr. Grammer, would  
11 you like to come up and have a seat at one of these  
12 microphones?

13 THE WITNESS: (Mr. Grammer) How about I sit  
14 over there? And then everyone will see me.

15 MR. KIM: Thank you.

16 DONALD GRAMMER  
17 of lawful age, being produced, having affirmed his  
18 testimony, and examined on the part of the Petitioner,  
19 testifies and says:

20 DIRECT EXAMINATION

21 QUESTIONS BY MR. SHAW:

22 Q. Okay. Mr. Grammer, what is your occupation  
23 or trade?

24 A. I am a retired engineer. I've worked my

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1 career for the Illinois Department of Transportation,  
2 and I work part time now as a professional engineer in

3 the environmental field. I'm also the pastor of a  
4 little Baptist church.

5 Q. How long have you been working as a  
6 professional engineer in the environmental field?

7 A. I've been working in the environmental  
8 field as a professional engineer for about 11 years.

9 Q. What type of work have you primarily done  
10 in the environmental field the past 11 years?

11 A. I started in '92 as an estimator, a project  
12 supervisor for a contractor, doing general contracting  
13 work, and he also did underground tank removal. And we  
14 gradually expanded while I was working for him into the  
15 tank removal field. Since that time, I worked for him  
16 five years. And since that time, five years ago, I had  
17 worked part time as an environmental engineer for two  
18 different firms that did environmental work.

19 Q. What was the name of the firm you currently  
20 work for?

21 A. Applied Environmental Technologies  
22 Incorporated in Carmi, Illinois.

23 Q. And you primarily do tank work for Applied  
24 Environmental?

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1 A. Yes.

2 Q. Are you familiar with the tank project for  
3 Rantoul Township High School, District Number 193?

4 A. Yes, sir.

5 Q. When did you become involved with that tank  
6 project approximately?

7 A. Approximately early 2001. I don't  
8 know. It was about then.

9 Q. What phase of the job did you start at for  
10 that project?

11 A. I got involved after the tanks were  
12 removed. Applied Environmental Technologies was  
13 selected as the consultant to do the necessary cleanup  
14 work. And I got involved at that point, because I am  
15 their consultant. And they made me aware of the project  
16 and what might be happening there on that site.

17 Q. What type of work did you do as a  
18 consultant for the Rantoul Township project?

19 A. I really got involved when I became, I  
20 guess, for Applied Environmental Technologies their  
21 project manager at the point we were virtually ready to  
22 go to corrective action. When we started to prepare  
23 plans and that sort of thing, then I became the project  
24 manager for Applied Environmental Technologies.

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1 Q. Did you prepare any documents for this  
2 project or review any documents for this project?

3           A.     I have reviewed all the documents for this  
4 project since its inception or since Applied became  
5 involved with it.

6                     The work that was actually done, the  
7 corrective action work that was done under contract, was  
8 done according to plans prepared by Clark & Associates.  
9 Clark did those plans at the request of the school  
10 district, because Clark was the consultant for a  
11 building project on site, and they wanted the same  
12 consultant to prepare the plans for the underground tank  
13 correction work.

14                    Clark prepared those plans, but they said  
15 to Applied Environmental, "We are not aware of the  
16 underground tank regulations, and therefore we do not  
17 want to be responsible for these plans, and we won't  
18 stamp them. Our professional engineer won't stamp  
19 them."

20                    So they worked with Applied Environmental.  
21 They prepared the plans. I reviewed them and stamped  
22 them as the engineer on the project. And that's how I  
23 was involved in the preparation of the plans for this  
24 project.

1           Q.     And I assume if I follow you correctly,

2 you're talking about the documents prepared with Clark,  
3 you're talking about bid documents and specifications?

4 A. Yes, and actual construction plans as well.

5 Q. Was the type project for the Rantoul  
6 Township High School District Number 193 -- I am just  
7 going to start calling that -- excuse me. I'm just  
8 going to start calling that "the school."

9 Was the type project for the school  
10 publicly bid?

11 A. Yes, it was.

12 Q. Do you know how many bids were received on  
13 this project?

14 A. We received three bids, public letting.

15 Q. Public letting.

16 Were you involved -- were you there at the  
17 reading of the bids or opening of the bids?

18 A. I opened the bids. I read them. I handled  
19 the letting.

20 Q. Do you know approximately what the dollar  
21 range was for the three bids you received?

22 A. The low bid was by the contractor who did  
23 the work, and it was give or take a thousand dollars,  
24 \$134,000, plus a few hundred.

1                   There were two other bids. One -- the high  
2 bid was 194,000, I believe, and plus some little bit of  
3 change. And the intermediate bid was for 178,000 plus a  
4 few hundred dollars.

5           Q.     And who was the bid ultimately awarded to?

6           A.     It was awarded to the low bidder. And for  
7 the life of me, I can't even tell you their name right  
8 now. They're a firm from Evansville, Indiana.

9           Q.     I think that's probably one of these stacks  
10 of documents, just so we can find that out later if  
11 necessary.

12                   Were you involved -- or strike that.

13                   Do you know, were there any utilities that  
14 were encountered during the site investigation of this  
15 process?

16           A.     There were utilities encountered during the  
17 site investigation because there was a waterline, a  
18 four-inch waterline, and the gas service for -- the  
19 waterline and the gas service both came into the  
20 school. And they both ran either immediately  
21 through -- one ran through immediately through this tank  
22 site, and the other one ran just along the eastern  
23 perimeter of it.

24           Q.     Were these active or inactive utilities?

1           A.     They were active.  They were the service  
2     taps for the school.

3           Q.     How did the presence of these utilities  
4     affect corrective action?

5           A.     Well, there was no way to work around these  
6     utilities.  The gas line ran directly through the tank  
7     pit in two directions.  The main entrance into the  
8     school went right through the tank pit, and a secondary  
9     line came across the tank pit sort of at a diagonal over  
10    to their ag. building.

11                    So there were two crossings of that tank  
12    pit with gas lines, and the tank pit was probably 75  
13    feet across from one end to the other.  There was no way  
14    to excavate, remove this contaminated material without  
15    causing that line to fail.

16                    The waterline ran along the east edge of  
17    the tank pit.  We had explored it by drilling and had  
18    determined that the tank was impacted, but we weren't  
19    sure how far we would have to excavate.  And for that  
20    reason and because the area between the tank pit and the  
21    building was so confined, we moved both of them over at  
22    the same time completely out of the way of the  
23    excavation.

24                    Does that answer the question?



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1           Q.     Well, just maybe it hasn't. Let me just be  
2 clear.

3                     Why was it necessary to relocate the  
4 utilities?

5           A.     Because there was -- if we had dug the  
6 contamination out with those utilities in place, those  
7 lines would have collapsed, both of them, certainly the  
8 gas line and potentially the waterline. It was so  
9 close. And if that had happened, it would have closed  
10 down the school. The entire school system would have  
11 been down for two to three weeks.

12          Q.     Would it have been possible to temporarily  
13 stop the lines or close the lines or remove the portion  
14 of the line that was in the way?

15          A.     It would have been possible to run  
16 temporary connections around, but temporary connections  
17 would have cost as much as the relocation. And the job  
18 still wouldn't have been done. We would have still had  
19 to come back and do it again.

20          Q.     Mr. Grammer, are you also familiar with the  
21 compaction work that was done on this project?

22          A.     I am.

23          Q.     From an engineering perspective, why was it  
24 necessary to compact the soil on this project?

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1           A.     This site is located in a traffic and  
2 parking area that was used by the school for loading  
3 their school buses. They pulled into this driveway and  
4 loaded up with students.

5                     The north end of this tank pit that was  
6 excavated -- and I haven't been to Rantoul since, but I  
7 think at this point as we're talking today, I think the  
8 north end of this tank pit is under a new building that  
9 was under construction at the time we were there  
10 working.

11                    And the material that went under that new  
12 building and under that parking lot, if it had not been  
13 compacted, would have been a disaster for both the  
14 parking facility and certainly for the building. There  
15 was no way that that building could have been put there  
16 without compacting that material. And if we had tried  
17 to put loose material back in the hole and then run  
18 school buses over, they would have been in trouble  
19 within a week. It had to be compacted.

20                   MR. SHAW: I have no further questions.

21                   HEARING OFFICER SUDMAN: Mr. Kim?

22                   MR. KIM: I have -- excuse me. I have a  
23 few questions for Mr. Grammer. Thank you.

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1 CROSS EXAMINATION

2 QUESTIONS BY MR. KIM:

3 Q. Mr. Grammer, you'll have to excuse me if I  
4 kind of jump around on the questions here. I'm going to  
5 try and direct my questions to you in the same subject  
6 areas that Mr. Shaw walked through.

7 You stated, I believe, that in at least  
8 some instances, Clark Consulting or whatever the name of  
9 the company's specific name was, Clark prepared certain  
10 plans, but they were not comfortable in having their PE  
11 sign off on them. So you reviewed the plans, and then  
12 you affixed your professional engineer stamp; is that  
13 correct?

14 A. Yes.

15 Q. Specifically as to the document that is  
16 titled, "A High Priority Amended Corrective Action Plan  
17 Budget" --

18 A. Clark did not do that one.

19 Q. Right. That was submitted on April 25,  
20 2002. That was submitted by Applied Environmental  
21 Technologies; is that correct?

22 A. Yes, that's right.

23 Q. And was your involvement in the preparation  
24 of that document reviewing the document and affixing

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1 your PE stamp?

2 A. Yes, it was.

3 Q. So is it correct that Mr. Williams, Brian  
4 K. Williams, who I believe is the professional geologist  
5 and president of Applied Environmental, did Mr. Williams  
6 prepare the document as a result?

7 A. Yes, he did, to the best of my knowledge.  
8 Now, I didn't see him write that, but he signed it as if  
9 he had, and sent it to me, and I trust him that he had  
10 done that.

11 Q. Okay. So did you have any input in the  
12 preparation of the document? Or was your input solely  
13 limited to review of the document that was presented to  
14 you?

15 A. I had input into that document.

16 Q. Okay.

17 A. Could I tell you how I had that?

18 Q. You guessed my question. What was your  
19 input in that?

20 A. Well, the initial plan on this site was to  
21 close it out with the agency by installing monitoring  
22 wells, and over a period of three years, monitoring the  
23 groundwater. If no contamination appeared, then we

24 could have simply signed off on this, and the agency

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1 would have accepted that and closed the file.

2 The school made the determination to do a  
3 cleanup because of the construction work for the new  
4 building. They did not want students even by chance  
5 exposed to any contaminated material that might be dug  
6 up on that site during construction. And we, Brian and  
7 I, discussed that change before he actually prepared  
8 this budget. I was aware of what was happening when he  
9 prepared it.

10 Q. Is it correct to state that this budget  
11 seeks amendment, an amendment of the previously approved  
12 budget to take into account, among other things, the  
13 interaction of the corrective action your business was  
14 involved with, with the construction of the new building  
15 that the school district was involved with?

16 A. I'm sorry. I didn't understand your  
17 question.

18 Q. Let me try to go back to that. Well,  
19 actually, you know, this has been referenced several  
20 times, but I don't think it's been clearly flushed out.

21 What was the construction that the school  
22 district was involved with?

23           A.     The school district had a grant from the  
24 State to build a new building; in fact, a new school.

21

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1           That just barely infringed on this tank pit on the north  
2 end. And that work was just getting started when we  
3 were there and doing the excavation for the tank pit.

4           Q.     So maybe my question -- now I can try and  
5 reword that, and it might make a little more sense.

6                     The fact that that new school construction  
7 was just getting under way and the fact that this new  
8 school construction was just barely infringing upon your  
9 excavation area, was that part of the reason why it was  
10 necessary to seek an amendment of the budget?

11          A.     I don't think so. I don't think that the  
12 amount of material excavated, the method of doing it, I  
13 don't think any of those things would have changed had  
14 there not been a building there. We would have  
15 compacted for the parking lot. I can't see that there  
16 would have been any change at all.

17          Q.     I believe you stated, however, that  
18 it -- well, let's try to keep this orderly. Okay.

19                     Through the course of your experience at  
20 least over the past five years or so of overseeing  
21 projects or involvement with projects involving leaking

22 underground storage tanks, have you familiarized  
23 yourself with the regulations in Title 35 Illinois  
24 Administrative Code, Part 732?

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1 A. I don't know. I don't know what Title 35  
2 is. I'm not an attorney. I think I have, but I'm not  
3 certain. I don't recognize it by the number.

4 Q. To the best of your knowledge, what are the  
5 statutory -- and I'm not asking for necessarily  
6 citations, but to the best of your knowledge, what are  
7 the statutes or the regulations that govern the cleanup  
8 of a leaking underground storage tank site? Do you know  
9 off the top of your head?

10 A. I think that's the 732 thing you're talking  
11 about.

12 Q. Okay.

13 A. And it's rules and regulations. As far as  
14 I'm concerned in day-to-day work, it's rules and  
15 regulations set down by these guys right here, by the  
16 IEPA.

17 Q. Okay. And do you know if the subject of  
18 utilities, either the removal of utilities or the  
19 replacement of utilities in the course of corrective  
20 action work, do you know if that subject is addressed

21 anywhere in the regulations to the best of your  
22 knowledge?

23 A. I've been told that they are.

24 Q. But personally you don't have any direct

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1 knowledge of that one way or the other; is that right?

2 A. No. No, I don't.

3 Q. You also were discussing the school  
4 construction -- let's go back to this again briefly.

5 Would it have been necessary for any of  
6 these utilities that we're talking about today to be  
7 removed or to be moved as part of the school district's  
8 construction of their new building?

9 A. No.

10 Q. Going back to compaction. I believe you  
11 just testified under cross examination that the  
12 amendments that were sought in the corrective action  
13 plan budget that was submitted that we're talking about  
14 today were not related to the new school construction;  
15 is that correct?

16 A. That's right.

17 Q. But I believe you testified earlier that it  
18 would be disastrous if the areas of compaction that are  
19 being addressed under this budget were not done in the



20 way that you were proposing? It would be disastrous  
21 both for the park facility and for the school's  
22 building?

23 A. That's correct, that's correct.

24 MR. KIM: Do you have a copy of the

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1 administrative record? I can show him a copy.

2 Actually, it might be in one of your exhibits as well.

3 MR. SHAW: I might have an extra one here.

4 MR. KIM: Okay.

5 Q. I'm going to hand you what's  
6 been described and submitted to the board as the  
7 administrative record in this case. And I'm turning to  
8 page 27 of the record. Could you take a look at that  
9 page, read it, and when you're done, let me know.

10 A. Okay.

11 Q. Okay. This is a certification form that  
12 was submitted as part of the amended budget; is that  
13 correct?

14 A. Yes, sir.

15 Q. And you affixed your professional engineer  
16 stamp to this document; is that correct?

17 A. I did.

18 Q. And in the text of this document, would you

19 look at the second paragraph that begins, "I hereby  
20 certify," and would you look at the second to last  
21 sentence that begins, "I further"?

22 A. "I further certify"? Yes, sir, I see what  
23 it says.

24 Q. Could you read that and the next sentence

25

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1 out loud please.

2 A. "I further certify the cost ineligible for  
3 payment for the fund pursuant to 35 Illinois  
4 Administrative Code Section 732.606 are not included in  
5 the budget proposal or amendment. Such ineligible costs  
6 include, but are not limited to" --

7 Q. And then I'm not going to make you read the  
8 whole list.

9 A. -- "costs associated with utility  
10 replacement."

11 Q. I was going to say, could you read the  
12 second and the third line?

13 A. "Cost associated with site restoration."

14 Q. And then the third line.

15 A. "Costs associated with utility  
16 replacement."

17 MR. KIM: Thank you.

18 Can I just take one minute?

19 HEARING OFFICER SUDMAN: Sure.

20 MR. KIM: I'd like to now -- I have just  
21 one more question for you, a series of questions.

22 The document that was labeled  
23 agreed -- the caption, "Agreed Supplemental Record," is  
24 that Petitioner's Exhibit Number 2?

26

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1 HEARING OFFICER SUDMAN: That's Number 1.

2 MR. KIM: Exhibit Number 1. Okay, thank  
3 you.

4 Q. I'd like you to -- I'm  
5 handing you what's been previously identified as  
6 Petitioner's Exhibit Number 1, and it's a series of  
7 documents. And one of those documents -- let me get  
8 them. And specifically I'd like you to look at one of  
9 those documents. Could you read the cover page on the  
10 document that I pointed to?

11 A. This one?

12 Q. Yes.

13 A. "High priority corrective action, main  
14 phase to be for the Rantoul High School Township,  
15 District Number 193, 200 South Sheldon Street, Rantoul,  
16 Illinois, number 970899, August the 2nd, 2001."

17 Q. This is the corrective action plan that was  
18 associated with the corrective action to be performed at  
19 the school facility; is that correct?

20 A. Yes.

21 Q. And I've also clipped open to a page. If  
22 you could turn to the page. I believe this is titled  
23 down at the bottom, A-1; is that correct?

24 A. A-2 is what you have it opened to.

27

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1 Q. Oh, let me make sure I've got the right  
2 one. That's fine. Could you identify what that page  
3 is, what that page represents?

4 A. This is a site plan as it was believed to  
5 be on August the 2nd, 2001.

6 Q. Okay. And does this site plan, is this an  
7 accurate description of the site to the best of your  
8 knowledge?

9 A. No, sir, it is not.

10 Q. And what is inaccurate about this?

11 A. In the final plans that were prepared, the  
12 plume as outlined here was larger. It extended further  
13 to the east. The gas line that is shown as a diagonal,  
14 from the upper right over to the building on the center  
15 left, was further over into the tank pit. And the plume

16 came right up against the waterline that is shown on  
17 this plan, but there's no arrow to it. It's labeled up  
18 at the top of the page.

19 Q. Okay.

20 A. The plume is much larger. It was much  
21 larger in actuality than it's shown here.

22 Q. Do you know if there was ever an amendment  
23 to the corrective action plan that was submitted that  
24 would postdate this document?

28

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1 A. No, sir, I don't know if there was one. I  
2 don't believe there was. If there was, I'm not -- I  
3 don't recall it at this time.

4 Q. And to the best of your knowledge, is there  
5 a map or depiction within the amended corrective action  
6 plan budget that would provide what you described as an  
7 accurate description of the site? Let me --

8 A. I know what you said, Mr. Kim, and I'm not  
9 aware if there is or not.

10 The set of conditions that I just described  
11 to you were most accurately depicted in the final plans  
12 that were prepared, and they were being developed as we  
13 went along. And we got a little bit more information, a  
14 little bit more information; we put that in the final

15 plans.

16 And the final plan sheets that were  
17 prepared had the best depiction of this -- of the  
18 conditions here. And I'm not certain as to which  
19 amended budget it might or might not have been included  
20 in. I'm sorry. I can't answer that question.

21 Q. So it is possible that the Illinois EPA  
22 does not have a plan sheet that describes the logistics  
23 of the arrangements that you described; is that correct?

24 A. Yes, that's possible.

29

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1 Q. As you look at this document, which is as  
2 you described inaccurate, and you looked to see what is  
3 depicted as the gas line, is that identified by a  
4 diagonal line moving -- I guess if this were a map, from  
5 the southwest to the northeast? There's several  
6 diagonal lines. I'm just trying to make sure we're  
7 talking about the same diagonal line on this map.

8 MR. SHAW: Can I just object to that  
9 question? You just mischaracterized his testimony as  
10 inaccurate, as describing this as inaccurate. I don't  
11 think that's what he said.

12 MR. KIM: No. Let me rephrase the  
13 question.

14                   What I meant to say is I agree -- I'm  
15                   assuming he is correct that the depiction on this map is  
16                   inaccurate. I'm simply now -- and I believe that was  
17                   his testimony, that what's found on this map is not  
18                   accurate to what the site actually entails. What I'm  
19                   simply trying to do is discuss what is presented on this  
20                   particular map.

21                   And all I was trying to do is, first of  
22                   all, just establish some lines on this map so that we're  
23                   all on the same page, and we're all talking about the  
24                   same thing. I want to make this clear for the board

30

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1                   later on when they read the record.

2                   MR. SHAW: Well, that question doesn't  
3                   require you to use the word "inaccurate." I believe you  
4                   can talk about the map without calling the map  
5                   inaccurate. You can check the testimony later on.

6                   MR. KIM: That's fine.

7                   Q. I'm not going to try to put  
8                   words in your mouth, Mr. Grammer.

9                   But if you look at this map, there is a  
10                  line. I believe that's identified as the gas line; is  
11                  that correct?

12                  A. Yes, sir.

13 Q. And that is a diagonal line that is a  
14 crossed line; is that correct? Or dashed line, rather;  
15 is that correct?

16 A. That's correct, sir.

17 Q. Well, actually, there's several dashed  
18 lines, but the one I'm referring to is the diagonal  
19 line. And, again, it sort of moves, if you were to  
20 consider this on a compass, from the southwest corner to  
21 the northeast corner; is that correct?

22 A. Yes, sir.

23 Q. And does that gas line intersect at two  
24 points on the perimeter of what's described as the new

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1 building location; is that correct?

2 A. According to this, it does, yes.

3 Q. So based upon what's depicted in this  
4 document, the gas line intersects the new building in at  
5 least two outer walls; is that correct?

6 A. Yes, sir. You're talking about the new  
7 building location?

8 Q. Yes.

9 A. Yes, sir. According to this, it does  
10 intersect that building at two locations.

11 Q. And based upon this diagram, if the new



12 building were to be located there, would the gas line  
13 need to be removed and relocated?

14 A. Based on this drawing, I assume that it  
15 would have needed to be moved, yes.

16 Q. Based upon the diagram that you have before  
17 you -- we're still on page A-2 of that plan -- would  
18 compaction of the excavated area that would be  
19 underneath the new building location, would that be  
20 necessary for the building of the new building, the  
21 construction of the new building?

22 A. According to the diagram which you gave me,  
23 which I'm holding here in my hand, this little area  
24 right --

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1 Q. Mr. Grammer, the problem is when the board  
2 members read this later, they have to sort of just read  
3 off the paper.

4 A. Yes. The little area at the north end that  
5 is intersected by the south line of the building, which  
6 according to this diagram would be approximately two or  
7 three feet by maybe eight feet, would have intersected  
8 the new building according to this diagram.

9 Q. Yes. And we're kind of talking about the  
10 areas in between boring number two and SIB between --

11           A.     SIB stands for soil investigative boring  
12     number two.

13           Q.     So what you just described is also sort of  
14     the area in between boring two and soil investigation  
15     boring number two; is that correct?

16           A.     Yes, sir.  Yes, sir.

17           HEARING OFFICER SUDMAN:  Would you please  
18     reiterate what page number you're looking at.

19           THE WITNESS:  We're looking at page number  
20     A-2 in the corrective action.

21           HEARING OFFICER SUDMAN:  A-2 of the agreed  
22     supplemental record.

23           THE WITNESS:  It's the second page in the  
24     exhibits section.

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1           Q.     (By Mr. Kim)  And I tell you what.  Why  
2     don't you do this, Mr. Grammer, just to further  
3     clarify.  In the bottom right-hand corner of that map,  
4     can you just read the date and also the description  
5     that's given in that map?

6           A.     The date on the bottom of this is 7-23-01,  
7     and it talks about the groundwater contamination plume.

8           MR. KIM:  Okay, thank you.

9           That's all the questions I have.  I have

10 nothing further.

11 HEARING OFFICER SUDMAN: Thank you.

12 Mr. Shaw, would you like --

13 MR. SHAW: Just a few.

14 HEARING OFFICER SUDMAN: Okay.

15 REDIRECT EXAMINATION

16 QUESTIONS BY MR. SHAW:

17 Q. Mr. Grammer, with respect to utility  
18 replacement versus utility relocation, what activity was  
19 involved with the school project?

20 A. You're talking about the building?

21 Q. The utilities were relocated? Or were  
22 utilities replaced on this project?

23 A. They were all simply relocated, but they  
24 were not relocated because of the building. This gas

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1 line that we talked about -- the map that we have shows  
2 this gas line runs diagonally, intersecting a main that  
3 comes in north and south. This was done in July of  
4 '01.

5 By the time we got the plans prepared, we  
6 found that this gas line that's shown north and south  
7 was shown improperly. This is not where it was  
8 located. This line was further to the south and across

9 the middle. It was not properly located. So in the  
10 ultimate development of plans, these lines were found to  
11 be in other places. Am I making sense?

12 Q. Well, why don't we just try to stick to  
13 answering my questions. We'll probably move through  
14 this quicker.

15 You've got the map in front of you that is  
16 described as map A-1? Or A-2? I'm sorry. And what is  
17 A-2 a map of again?

18 A. It's a map of the groundwater contamination  
19 plume. It's not a map of the soil contamination.

20 Q. Which map relates to the soil contamination  
21 plume?

22 A. On page A-3.

23 Q. Well, not according to my exhibit.

24 A. It says excavation map, but that shows the

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1 excavation is what we anticipated would be the extent of  
2 the soil contamination.

3 Q. Could you please turn to page A-1. I think  
4 that's on page 110.

5 A. Yes, sir.

6 Q. What is that a map of?

7 A. That is a map of the soil contamination

8 plume.

9 Q. How does that map show the utilities with  
10 respect to the contamination plume?

11 A. It shows, to the best of our knowledge at  
12 that time, that these utilities ran through the plume.

13 Q. And was it still true after you actually  
14 did the excavation that utilities ran through the plume?

15 A. Yes. Now, let me clarify. The old ones  
16 did. We put them back there. We didn't put them back  
17 where they were. They didn't go through the plume.  
18 When we got done, we moved them out of the way. We  
19 didn't put them back there.

20 Q. I'm sorry. What we're looking at is a map  
21 dated July 23, 2001; is that correct?

22 A. Right.

23 Q. That is the information that was known to  
24 be true at that time, correct?

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1 A. To the best of our knowledge, yes.

2 Q. And this map was submitted as part of the  
3 corrective action plan; is that correct?

4 A. That's correct.

5 Q. And the course of action in this corrective  
6 action plan was approved; is that correct?

7 A. Yes.

8 Q. Subsequently, you excavated the  
9 contaminated soil? Was that part of your project?

10 A. Yes.

11 Q. At a later date, the contamination was  
12 determined to have different features?

13 MR. KIM: I'm going to object. Those are  
14 all leading questions.

15 MR. SHAW: He's got it on the map.

16 HEARING OFFICER SUDMAN: I'll sustain  
17 that. Please rephrase.

18 Q. (By Mr. Shaw) As of July 23, 2001, the  
19 date of these maps, were the utilities believed to be  
20 located within the soil contamination plume?

21 A. Yes, with the exception of the school's  
22 waterline that was coming in, and it was believed to be  
23 right on the edge of the contamination. At the time we  
24 went to construction, we thought it was right along the

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1 edge of the pit, and we were going to dig eight feet  
2 under it.

3 Q. When you engaged the corrective action and  
4 you were excavating soil, what processes or what steps  
5 are taken during the excavation to determine where to

6 stop digging?

7 A. We have what we call a FID. It's a flame  
8 ionization detector that we can use. It's a machine  
9 that actually sniffs the soil samples. When you take a  
10 sample, we put it in a zip-lock baggie. We give it a  
11 little bit of time to volatilize any contamination  
12 that's in it. And we put its nose in that bag, and it  
13 registers to give us an indication of whether or not  
14 that soil is contaminated. As we dig, we constantly  
15 monitor using that FID, as we call it. F-I-D.

16 And as we get to cleaner and cleaner soil,  
17 the numbers that it gives us go down and down. And  
18 ideally we could come to a situation where we could have  
19 a vertical wall perhaps with a sample that would  
20 register zero on the FID meter.

21 Realistically we probably very seldom get  
22 to a zero, because it will also pick up other things  
23 besides petroleum. So we're constantly monitoring with  
24 our FID as we dig to be sure we're not digging out clean

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1 dirt and hauling it off.

2 Q. So the actual excavation doesn't  
3 necessarily always resemble what is believed to be  
4 necessary?

5           A.     That's exactly right.  You can't drill.  
6     You can't afford economically to drill enough holes to  
7     define the perimeter of the excavation to the nearest  
8     foot.  There has to be some interpretation and some  
9     extrapolation to determine what you're going to dig.

10          Q.     So you have also referenced in your cross  
11     examination here a map that you say more accurately  
12     indicates the site condition.  Is this map based upon  
13     the processes you just talked about in terms of digging  
14     and analyzing the soil as you dig?  Is that the map  
15     you're talking about?

16          A.     I'm sorry.  You lost me some place.  I'm  
17     not trying to be evasive.  I just don't understand what  
18     you're asking me.

19          Q.     We've been talking about this map, July 23,  
20     2001.  There was some reference in your earlier  
21     testimony that there is a subsequent map?  Did I  
22     misunderstand your testimony?

23          A.     There was a map that was prepared that went  
24     in the plans that we actually prepared.  At the time we

1     prepared plans for the letting for the bids and we took  
2     all the information we had, prepared the very best map  
3     we could to give that out to the prospective



4 contractors, and it was slightly different. I hesitate  
5 to say how much, without having it in front of me from  
6 the one that is shown on A-1, but there was some slight  
7 variation in it.

8 Q. What information did you have at the time  
9 of the letting that you would not have had at July 23,  
10 2001?

11 A. We had input from the engineering firm from  
12 Clark, on the location of the lines that were coming  
13 into the school. For example, on the gas line, the  
14 waterline coming in that we had not had previously.  
15 They had been out there and done exploration work. They  
16 were preparing plans on this site. They had better  
17 information, and it showed up on the plans.

18 We didn't have that before. We had just  
19 our own best estimate and the reports of personnel that  
20 worked for the school as to where these lines were. So  
21 we didn't know really exactly where they were at the  
22 time this was prepared.

23 Q. At the time this was prepared, and we're  
24 talking -- you're referencing pulling up the July 23,

1 2001 maps. And in particular, I would reference the  
2 excavation map on page A-3. At that time, you knew that

3 the gas line and the waterline were going to be impacted  
4 by this excavation; is that correct?

5 A. We certainly thought they were.

6 Q. So when you say you have additional  
7 information about where the utility lines are, did it  
8 make -- does it make any difference to how you would  
9 deal with the utilities?

10 A. No, no, because the information that the  
11 consultant gave us for the final plans placed the gas  
12 line further, the north-south gas line further out into  
13 the excavation than it is here. It was out inside the  
14 excavation also. Yes, it made a difference in how we  
15 were dealing with them, because they were directly  
16 impacted.

17 Q. Okay. With respect to the map on page A-3,  
18 and I'm looking at a gas line that's running northeast  
19 to southwest, was that gas line later determined to be  
20 which direction from this page? North, south, east or  
21 west?

22 A. It was on approximately the same angle, but  
23 a little further south than it's shown on this page.

24 Q. With respect to the waterline that I see

1 running north and south on this map, where was it later

2 determined to be?

3 A. I don't have a scale with me to scale the  
4 distance from the waterline over to the building. And I  
5 hesitate to say that it was one or two feet further  
6 either direction. It's very close to where it's shown  
7 here, I think.

8 Q. There wasn't a substantial difference in  
9 the waterline then? Is that a fair assessment?

10 A. There was not a substantial difference.

11 Q. If it was determined that these were the  
12 exact locations of the waterline and the gas line, would  
13 it still have been necessary to relocate those  
14 utilities?

15 A. It would still have been necessary to  
16 locate -- relocate the diagonal gas line, the  
17 waterline. It would not have been necessary to relocate  
18 the north-south gas line next to the building.

19 Q. Then maybe that's where I'm confused. Were  
20 there two gas lines relocated?

21 A. Yes. The north-south line is involved with  
22 the main service coming into the building. The diagonal  
23 line was a secondary line that came off that main  
24 service and came over here to service the existing

1 vocational agriculture building.

2 Q. So there was a second gas line running  
3 north-south on this map. Where was that later  
4 determined to be in fact?

5 A. It was in fact determined to be within the  
6 excavation. It would have been undermined and subject  
7 to failure.

8 Q. Are you saying it would have been located  
9 further to the west than where it's depicted in this  
10 map?

11 A. Yes.

12 Q. And this may be all my fault with  
13 confusion. I didn't realize there was a second gas  
14 line. So that might explain why I'm confused.

15 When you had indicated that there was  
16 additional information or a more accurate map that was  
17 later produced, does that map have -- was that later  
18 map, did it change any of the perimeters for excavation  
19 or soil contamination plumes, groundwater contamination  
20 plumes? Or did it relate solely to the placement of  
21 utilities?

22 A. It did not affect the excavation we would  
23 have done. It related strictly to the location of the  
24 utilities.

1                   MR. SHAW: I don't have any further  
2 questions.

3                   HEARING OFFICER SUDMAN: Mr. Kim?

4                   MR. KIM: Just a few.

5                                 RE CROSS EXAMINATION

6 QUESTIONS BY MR. KIM:

7                   Q. Mr. Grammer, you testified that after -- at  
8 some date after July 23rd of 2001, Applied Environmental  
9 Technologies came into additional more accurate  
10 information -- well, additional information; is that  
11 correct?

12                   A. Yes.

13                   Q. Regarding the site layout and regarding the  
14 location of utilities including the gas lines and  
15 waterlines?

16                   A. That's correct, that's correct.

17                   Q. And that that information was then  
18 incorporated into the letting of bids that your firm  
19 handled; is that correct?

20                   A. That's correct.

21                   Q. When were the bids let? Do you know  
22 roughly?

23                   A. The dates run together here, and I've  
24 reviewed the file, but it seems to me the letting

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1 was -- the initial budget was approved in October,  
2 October 5th, I believe, of 2001 or something. And the  
3 letting was held in late October. The work started  
4 within just a week or so later and went on during  
5 November and into December.

6 Q. And we're talking about calendar year 2001?

7 A. Yes, sir, all in 2001, yes, sir.

8 Q. And the amended budget that we're  
9 discussing today was submitted to the agency in April of  
10 2002; is that correct?

11 A. Yes, sir.

12 Q. And the agency's decision in this case  
13 that's under appeal that we're talking about here today  
14 was dated September 5th of 2002; is that correct?

15 A. I don't know the exact date, but I know it  
16 was 2002.

17 Q. And that document is in the record, so  
18 that's okay.

19 And I believe you testified that looking at  
20 map A-3, that there is a north-south gas line that was  
21 the main line to the school building; is that correct?

22 A. That's correct.

23 Q. And that the diagonal line, the diagonal  
24 gas line was a -- I don't know if it's a secondary --

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1           A.    A secondary.

2           Q.    -- that ran to the industrial arts  
3 building; is that correct?

4           A.    Yes.

5           Q.    And based upon the additional information  
6 that you received, the north-south gas line was later  
7 determined to be within the excavation area; is that  
8 correct?

9           A.    Yes, sir.

10          Q.    And if you look at the map A-3 that's dated  
11 July 23rd of 2001, that north-south line is not depicted  
12 within the excavation area; is that correct?

13          A.    That's correct.

14          Q.    Do you believe it would have been helpful  
15 for the Illinois EPA when reviewing the submitted budget  
16 request to have the most up-to-date information  
17 possible?

18          A.    Yes, sir, I do.

19          Q.    And just one question, or just a couple  
20 just to flush out this new building.

21                    The grant that you discussed before  
22 concerning the new building, that was something that the  
23 school district was undertaking; is that correct?

24          A.    That's correct. We had nothing to do with

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1           that at all.

2                   Q.     So that was a project that although in time  
3                   and in circumstance sort of coincided with your  
4                   corrective action work, that was a project that had a  
5                   life of its own, was independent, and was going to take  
6                   place regardless if there had never been a release from  
7                   an underground storage tank?

8                   A.     Yes, sir, that's exactly right.

9                   MR. KIM:   I have nothing further.

10                  HEARING OFFICER SUDMAN:  Thank you.

11                  Mr. Shaw, do you have any redirect?

12                  MR. SHAW:  No, I don't.

13                  HEARING OFFICER SUDMAN:  Thank you.

14                           I would like to clarify for the board; I  
15                   was looking at the agreed supplemental record, and there  
16                   are some other exhibits that are attached to other  
17                   parts.  The maps that were being referred to in  
18                   this -- in Mr. Grammer's testimony were on pages 112, or  
19                   110 through 112 of the agreed supplemental record.  Is  
20                   that correct?

21                   MR. KIM:  That's correct.  I apologize.

22                   HEARING OFFICER SUDMAN:  That's okay.

23                   MR. KIM:  The copy that I gave Mr. Grammer  
24                   has those pages.  The copy that I was looking at did



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1 not.

2 HEARING OFFICER SUDMAN: Okay. So we're on  
3 the same page there.

4 MR. KIM: Yes.

5 HEARING OFFICER SUDMAN: Mr. Shaw, do you  
6 have anything further for your case in chief?

7 MR. SHAW: No, I don't.

8 HEARING OFFICER SUDMAN: Mr. Grammer, thank  
9 you very much.

10 THE WITNESS: (Mr. Grammer) You're welcome,  
11 ma'am. Thank you.

12 HEARING OFFICER SUDMAN: Mr. Kim, would you  
13 please proceed with your case in chief.

14 MR. KIM: Yes. I'd like to call -- could I  
15 just have one minute?

16 HEARING OFFICER SUDMAN: Sure.

17 MR. KIM: Yeah. I'd like to call Jay  
18 Gaydosh.

19 HEARING OFFICER SUDMAN: Thank you.

20 Would you please have a seat up there, and  
21 spell your name for the court reporter please.

22 THE WITNESS: (Mr. Gaydosh) My name is Jay  
23 F. G-a-y, "D" as in David, o-s-h.

24 HEARING OFFICER SUDMAN: Thank you. Would

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1 you please have a seat.

2 [Witness sworn.]

3 MR. KIM: Thank you.

4 And I'm just going to again note, we've  
5 already stipulated to the admission of Mr. Gaydosh's  
6 discovery deposition. So his background and so forth  
7 have already been established.

8 HEARING OFFICER SUDMAN: Thank you.

9 MR. KIM: I'm handing the witness what is I  
10 believe identified -- I don't know what we labeled the  
11 deposition.

12 HEARING OFFICER SUDMAN: Petitioner's 2.

13 MR. KIM: Petitioner's Exhibit 2.

14 JAY F. GAYDOSH

15 of lawful age, being produced, sworn and examined on  
16 the part of the Respondent, testifies and says:

17 DIRECT EXAMINATION

18 QUESTIONS BY MR. KIM:

19 Q. Could you take a look at the first page of  
20 that. And is that a copy or a transcript of the  
21 deposition that you gave in this case earlier?

22 A. Yes.

23 Q. Would you please turn to page 41 of the

24 deposition. And would you just look that page over, and

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1 when you've had a chance to do so, just let me know.

2 A. Okay.

3 Q. I believe beginning on line 8 of page 41,  
4 you were asked if weather conditions -- well,  
5 specifically, the question says, "Are weather conditions  
6 something that is considered a demurrage?" And your  
7 answer is, "Not as far as I'm aware of."

8 If I use the term "weather condition" and I  
9 use the term "demurrage," is that referring to the very  
10 same thing? Or can you explain your understanding of  
11 how weather conditions would or would not be considered  
12 a demurrage?

13 A. I guess it all depends on the crew doing  
14 the work. We've got crews that will work in about any  
15 weather conditions, and we've got some that will stop if  
16 it's raining, wind's blowing hard. So whether that  
17 weather condition is actually something that causes the  
18 demurrage or the delay is unknown at any given time.

19 Q. So do you think that -- you know, that's  
20 really all I have.

21 HEARING OFFICER SUDMAN: Okay, thank you.

22 MR. KIM: I'll stop while I'm at it.

23 HEARING OFFICER SUDMAN: Mr. Shaw?

24 MR. SHAW: No questions.

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1 HEARING OFFICER SUDMAN: Okay. Well, thank  
2 you. Thank you very much, Mr. Gaydosh.

3 Before we hear closing arguments, I'd like  
4 to go off the record so that we may discuss a briefing  
5 schedule, which I will then read into the record  
6 please.

7 [Off-the-record discussion.]

8 HEARING OFFICER SUDMAN: We've just had an  
9 off-the-record discussion regarding post-hearing  
10 briefs.

11 The parties have agreed to a briefing  
12 schedule as follows:

13 The transcript of these proceedings should  
14 be available from the court reporter by February 26th,  
15 and I will try to get that on the board's Web site as  
16 soon as possible thereafter.

17 And the public comment deadline, if there  
18 are any members of the public who wish to file written  
19 public comment, will be February 25, 2003. As long as  
20 it is postmarked by February 25, 2003, the board will  
21 accept that. Public comment must be filed in accordance

22 with section 101.628 of the board's procedural rules.

23 The petitioner's post-hearing brief will be  
24 due on March 3, 2003. The respondent's brief will be

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1 due on March 17, 2003. And the petitioner's reply brief  
2 will be due on March 24, 2003. And the mailbox rule  
3 will not apply to these briefs, since this is a decision  
4 deadline case.

5 Mr. Shaw, would you like to make a closing  
6 argument at this time?

7 MR. SHAW: I think I'll reserve my argument  
8 for brief.

9 HEARING OFFICER SUDMAN: Okay. Mr. Kim?

10 MR. KIM: I'll follow Mr. Shaw's lead.

11 HEARING OFFICER SUDMAN: Okay. I will  
12 proceed to make a statement as to the credibility of  
13 witnesses testifying during this hearing. Based on my  
14 legal judgment and experience, I find both of the  
15 witnesses testifying to be credible.

16 At this time, I will conclude the  
17 proceedings. It is Tuesday, February 18th, at  
18 approximately quarter after 10:00 in the morning. And  
19 we will stand adjourned. Thank you everyone for your  
20 participation.



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