

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
June 10th, 2003

MICK'S GARAGE,
Petitioner,

No. PCB 03-126
(UST Appeal)

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Respondent.

Proceedings held on July 16th, 2003, at 10 a.m., at the offices of the Madison County Administration Building, County Board Room 203, 157 North Main Street, Edwardsville, Illinois, before Carol Sudman, Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR
CSR License No.: 084-004316

KEEFE REPORTING COMPANY
11 North 44th Street Belleville,
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A P P E A R A N C E S

SHAW & MARTIN, P.C.
BY CURTIS W. MARTIN, ESQ.
FOR PETITIONER

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY JOHN J. KIM, ESQ.

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1 HEARING OFFICER SUDMAN: Good morning. My name is Carol
2 Sudman and I'm a hearing officer with the Pollution Control
3 Board. This is the hearing for PCB 03-126, Mick's Garage v.
4 IEPA. It is July 16, 2003, at 10 a.m.

5 I want to note for the record that there are no members of
6 the public present. Members of the public are allowed to provide
7 public comment if they so choose.

8 At issue in this case is the corrective action plan and
9 deductible determination regarding a leaking underground storage
10 tank site at 1251 E. Chain of Rocks Road in Pontoon Beach,
11 Madison County. The statutory decision deadline in this case is
12 December 31, 2003.

13 You should know that it is the Pollution Control Board and
14 not me that will make the final decision in this case. My
15 purpose is to conduct the hearing in a neutral and orderly manner
16 so that we have a clear record of the proceedings. I will also
17 assess the credibility of any witnesses on the record at the end
18 of the hearing.

19 This hearing was noticed pursuant to the Act and the
20 Board's rules and will be conducted pursuant to Sections 101.600
21 through 101.632 of the Board's procedural rules.

22 At this time I would like to ask the parties to please make
23 their appearances on the record.

24 MR. MARTIN: Curtis Martin, attorney for petitioner.

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1 HEARING OFFICER SUDMAN: Mr. Martin, could you please move
2 one of the microphones in front of you?

3 MR. MARTIN: Yes. My name is Curtis Martin, Shaw & Martin,
4 Mt. Vernon, Illinois. Attorney for petitioner.

5 MR. KIM: John Kim with the Illinois EPA.

6 HEARING OFFICER SUDMAN: Are there any preliminary matters
7 that you would like to discuss on the record?

8 MR. MARTIN: Yes, with regard to a supplement of the
9 administrative record that was prepared. Yesterday I had faxed
10 to Mr. Kim some additional documents that I would like to have
11 included in the administrative record. John's indicated to me
12 off the record that he had no objection to that. So I suppose we
13 could move that Petitioner's Exhibit 1, and however the hearing
14 officer prefers to include that in the record.

15 HEARING OFFICER SUDMAN: Are you moving that now?

16 MR. MARTIN: Yes.

17 HEARING OFFICER SUDMAN: John, do you have any objection to
18 that?

19 MR. KIM: No objection. Just to clarify, the documents
20 that are being -- that are the subject of the exhibit, or what
21 have you, were not included in the administrative record because
22 they were not in the possession of or reviewed by the Illinois
23 EPA and the date of the decision; however, they do predate the
24 decision. And based on the information that's contained in the

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1 documents, we have no objection to them being included in as a
2 supplement.

3 HEARING OFFICER SUDMAN: Okay. And then I will label these
4 Petitioner's Exhibit 1 and admit that into the record.

5 MR. MARTIN: Thank you.

6 HEARING OFFICER SUDMAN: Mr. Martin, would you like to give
7 an opening statement?

8 MR. MARTIN: No, I think we would just like to proceed to
9 the evidence.

10 HEARING OFFICER SUDMAN: Okay. Mr. Kim, would you like to
11 give an opening statement?

12 MR. KIM: No, we'll waive the opening statement.

13 HEARING OFFICER SUDMAN: Okay. Mr. Martin, you may call
14 your first witness.

15 MR. MARTIN: I'd like to call Stephen Fincher, please.

16 HEARING OFFICER SUDMAN: Mr. Fincher, have a seat right
17 here and we'll have the court reporter swear in the witness.

18 WHEREUPON:

19 STEPHEN FINCHER,
20 called as a witness herein, having been first duly sworn,
21 deposeth and saith as follows:

22 MR. MARTIN: I need you to hold that microphone close so
23 everybody can hear you.

24 A. Okay.

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1 MR. MARTIN: Thank you.

2 EXAMINATION

3 BY MR. MARTIN:

4 Q. Will you state your full name, please?

5 A. Stephen L. Fincher.

6 HEARING OFFICER SUDMAN: Would you spell that, please?

7 A. S-T-E-P-H-E-N F-I-N-C-H-E-R.

8 Q. (By Mr. Martin) You go by Steve?

9 A. Yeah, yeah.

10 Q. Steve, how old are you?

11 A. 46.

12 Q. Where do you live?

13 A. Edwardsville.

14 Q. What is your line of employment?

15 A. My family runs a truck repair facility in Pontoon Beach.

16 Q. Is that known as Mick's Garage?

17 A. Yes.

18 Q. Mick's Garage currently operates as a corporation,
19 Mick's Garage, Inc.; is that correct?

20 A. Yes.

21 Q. Prior to that it had operated as a d/b/a, doing business
22 as, Mick's Garage?

23 A. Yes.

24 Q. And Mick's Garage, Inc., was incorporated when,

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1 approximately?

2 A. 1995, I believe.

3 Q. All right. And since that time it has been operating as
4 Mick's Garage, Inc.?

5 A. Yes.

6 Q. Do you own shares in Mick's Garage, Inc.?

7 A. Yes.

8 Q. Are you an officer of Mick's Garage, Inc.?

9 A. Yes.

10 Q. What is your office?

11 A. President and secretary.

12 Q. All right. And you have held that office for how long?

13 A. Since the inception of it. '95, yeah.

14 Q. All right. And Mick's Garage, the facility is located
15 at what address?

16 A. 1251 E. Chain of Rocks Road in Pontoon Beach.

17 Q. Illinois?

18 A. Yes.

19 Q. How long has Mick's Garage, the facility, been in
20 operation?

21 A. 1945. They opened up -- they started a business in '45
22 on that corner.

23 Q. And it's been at the same location ever since?

24 A. Yes.

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1 Q. When did you first become involved in Mick's Garage
2 operation?

3 A. I would say '73.

4 Q. And how did that start?

5 A. I was going to school and I would kind -- I was working
6 down there in the evenings for them. Actually I was there --
7 being a family thing I was there when I was a kid too, sweeping
8 up and stuff like that.

9 Q. Pumping gas?

10 A. Yeah, things like that.

11 Q. Have you essentially been at Mick's Garage operation
12 since you began in '73 or so?

13 A. Yes.

14 Q. Now as you grew older and continued to work at Mick's
15 Garage, is it safe to assume your responsibilities at Mick's
16 increased over time?

17 A. Yes.

18 Q. Did you essentially become the operator or manager of
19 the -- Mick's Garage?

20 A. Yes, for the -- most of the stuff. There's -- My dad
21 still has say over me but he -- it's in an unofficial way.

22 Q. In -- Let me take you through around 1980. Were you
23 pretty much running the operation at that point?

24 A. Actually a lot of my responsibilities didn't really kick

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1 in until about '83. Then I took over the books and did a lot --
2 and did a lot of that stuff. But prior to that, I was just
3 almost basically an employee.

4 Q. All right. And did your duties include pumping your gas
5 and monitoring the gas tanks and those sorts of things?

6 A. Yes.

7 Q. How many gas tanks are at the facility, by the way, or
8 underground tanks? Let me clarify. Not gas tanks but
9 underground tanks?

10 A. Well, there is -- there was -- Since then they all have
11 been removed. There was 15, I think, about.

12 Q. Were you aware back in 19 -- the mid 1980s that there
13 existed 15 tanks?

14 A. No.

15 Q. How many were you aware of at that time?

16 A. I was aware of a one 6,000 gallon diesel fuel tank, two
17 2,000 gallon diesel fuel tanks, three 4,000 gallon tanks for
18 regular gas, one 4,000 gallon tank we sold premium fuel out of,
19 and one -- I don't remember if it's a 500 or 1,000 gallon tank
20 that we put in for gasohol. And that was -- and there was
21 actually a waste oil tank that I knew we had that -- that I
22 didn't -- we -- there was no outlet so I had really no idea
where

23 it was.

24 Q. In the mid 1980s, how many tanks were operating at

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1 Mick's Garage facility? Let me ask the question again. Let me
2 back up. In around 1980, how many tanks were in operation at
3 Mick's Garage?

4 A. Let's see. There's one -- It would be all those tanks
5 that I had stated. However, let's see, I'm counting nine if I
6 counted right. Three diesel, five for gas and the one waste oil
7 tank but I'm not going -- but it's -- I don't know if you
8 consider that -- we weren't -- we weren't accessing it so I don't
9 know if you would say we were operating it or not.

10 Q. Are you aware that some of the documentations submitted
11 to the Illinois Environmental Protection Agency stated that there
12 were 11 tanks?

13 A. Yes, because there was a couple heating fuel -- heating
14 oil tanks that the -- the restaurant used to operate down there
15 used, and they were put out of service in probably, I would say,
16 late '60s and they switched over to a regular electric furnace.
17 And I wasn't really aware they were even there.

18 Q. And are you also aware that some of the documentation
19 submitted to the Illinois Environmental Protection Agency stated
20 there were 15 tanks?

21 A. Yes, they -- When they were removing the tanks, they
22 found four other tanks in the ground mostly because they were --
23 almost every one of them were really reasonably close in
24 proximity to the other tanks.

1 Q. And those you initially were not aware of?

2 A. No, I had no idea they were there.

3 Q. Okay. Did your duties at Mick's Garage include the
4 registration of the tanks?

5 A. Yes.

6 Q. And do you recall when you registered the tanks, and the
7 documents will reflect that was May of 1986, but do you recall
8 when you registered those tanks, how many you registered?

9 A. I couldn't be for certain but I would think that I might
10 have registered -- I would have registered the three diesel
11 tanks, the five gasoline tanks but I'm not absolutely certain
12 that -- if -- how the registration went on the waste oil tank and
13 I know I didn't register the heating oil fuel tanks.

14 Q. All right. Let me focus your attention to around 1980
15 and the diesel tanks, okay? Was there an accident or occurrence
16 there regarding the diesel tank pump around -- in the 1980s or
17 around 1980, I should say?

18 A. Yeah, it was in the '80s. I'm not sure exactly when.
19 We had two operating diesel fuel pumps in the back of the
20 facility and one pump was connected to two 2,000 gallon fuel
21 tanks that were adjoined with a cross-over line. And then we had
22 another pump that was connected to the 6,000 gallon fuel tank.
23 And sometime in the '80s we had a tractor-trailer come around and
24 back in to the one pump and pushed it sideways and tilted it.

1 Q. And which pump was that?

2 A. This was the one that was connected to the two 2,000
3 gallon fuel tanks.

4 Q. All right.

5 A. And after he did that, the first time we tried to use
6 the pump after that, it wouldn't dispense any fuel.

7 Q. Okay.

8 A. So we -- our fuel sales were way down and we decided it
9 wasn't worth the hassle or the money to put it -- to try to
10 figure out what was wrong with it and put it back in service so
11 we just never used it anymore and just continued to sell off the
12 other pump that was connected to the 6,000 gallon fuel tank.

13 Q. Okay. At the time of the tractor-trailer backing over
14 the pump, at that time or any time thereafter, did you personally
15 observe any spill or leak from the dispenser or anything around
16 those two 2,000 gallon diesel tanks?

17 A. No, we -- it wasn't -- it wasn't being -- actually
18 pumping at the time. It wasn't being used and there was nothing
19 to -- to indicate what had happened in there. But I didn't see
20 any fuel or nothing like that.

21 Q. All right. In 19 -- around 1980 when this accident
22 occurred, you ultimately stopped using the pumps, the two 2,000
23 gallon diesel tanks, did you know the type of pump used at that
24 dispenser?

1 A. No, I wasn't familiar with how that system -- that
2 system or any of our fuel systems worked at the time.

3 Q. All right. Now let me jump you ahead then to 1986.
4 From 1980 this accident you described, the tractor-trailer, until
5 1986, you hadn't been using the pump and the dispenser at the --
6 connected to the two 2,000 gallon diesel fuel tanks; correct?

7 A. Yes.

8 Q. In 1986 when you registered the tanks, including the two
9 2,000 gallon diesel tanks, did you indicate in the registration
10 form the incident you just described regarding the
11 tractor-trailer backing over the pump?

12 A. Well, run -- say that again.

13 Q. Okay. Did you indicate in the forms that were used for
14 registration of the tanks, did you in that form indicate this
15 incident about the pump having been damaged by the
16 tractor-trailer?

17 A. No.

18 Q. Okay.

19 MR. KIM: I'm going to object. Which forms are you
20 referring to?

21 MR. MARTIN: That would be the registration forms for the
22 tank.

23 MR. KIM: That were?

24 MR. MARTIN: Used in 1980.

1 Q. (By Mr. Martin) If you recall your testimony, you
2 didn't make any indication to that?

3 A. Not -- not specifically about how -- how the accident --
4 about the accident with the pump, no.

5 Q. Did you in 1980 through 1986 make an assumption, your
6 own personal assumption, that the line leading from the two 2,000
7 gallon diesel tanks to the pump and dispenser had leaked?

8 A. Yeah, we -- on every -- on every spot on that form the
9 -- one of the questions for every tank is why was this -- why and
10 when was this tank put out of service. And my reasoning for that
11 tank, explaining that, was that I put down the line going to the
12 tank developed a leak, but I had no knowledge actually at that
13 time we -- the pump and everything was still situated the same
14 way it was when the truck backed and hit it and tilted it and we
15 had never -- had never excavated or anything to determine why
16 that unit didn't work. It was just a -- just a blatant
17 assumption not knowing how the system works.

18 Q. Okay. So then did you at a later time, after having
19 indicating your assumption on the registration forms, actually
20 discover what type of pump was used with the two 2,000 gallon
21 diesel tanks?

22 A. Yes, I -- in -- in the workings of taking or looking at
23 the pumps and how they were set up, we have -- we had two
24 different type pumps on the property. Our gasoline pumps in

1 front were dispensers where the pump is situated at the tank
2 itself and pumps gas to the dispenser. Our diesel fuel tank in
3 the back were actually suction pumps and they actually draw fuel
4 on -- on a suction system out of the tank. And the diesel pumps
5 will not work if you don't have the suction available to draw
the
6 fuel out.

7 Q. Okay. So if the fuel cannot be drawn, if the suction
8 pump is not operating properly, the fuel stays in the tank?

9 A. Yes, it won't -- it won't go -- And the suction breaks.
10 By all rights there's nothing -- there's nothing to draw. It
11 needs the suction to draw the fuel.

12 Q. Now the two 2,000 gallon diesel fuel tanks, along with
13 several of the other tanks, were pulled in April of 1999; is
that
14 correct?

15 A. Yeah, that sounds right.

16 Q. All right. Were you present when the pull of two 2,000
17 gallon diesel tanks was completed?

18 A. Yes.

19 Q. Was a Fire Marshal Office representative also present
at
20 that time?

21 A. Yes.

22 Q. Did you observe, with regard to the pull of the two

23 2,000 gallon diesel tanks, any spill, leakage, any product from
24 those tanks or lines or anything surrounding them?

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1 A. There was nothing at the line going from the tank to
the
2 pump. I'm not sure if the -- the actual tank themself had any
3 seepage. I don't remember that. But I remember we specifically
4 looked at the area of the dirt that went -- from where the tank
5 provided the fuel to the pump from the line in that area there
6 and there was no contamination or any fuel that I could see
there
7 at all.

8 Q. And after the pull of those tanks in April of 1999, did
9 you have any further contact or involvement with the Fire
10 Marshal'S Office or with the Illinois Environmental Protection
11 Agency directly by a form, conversations, anything of that
12 nature?

13 A. Well, nothing specific that I can think of.

14 Q. What I'm getting at, your environmental consultant was
15 involved directly with IEPA and the Fire Marshal'S Office at
this
16 point; is that correct?

17 A. Yeah.

18 Q. You understand that on June 11, 1991, at least
suspected
19 release of contaminants from some of the tanks were reported?

20 A. Yes.

21 Q. Okay. And can you describe how that reporting came

22 about?

23 A. In that time period we were looking to -- to go forward
24 with the tank removal and soil clean-up on our property. And we

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1 were still selling gasoline but actually had gotten out of
2 selling fuel altogether at the time.

3 Q. Diesel fuel?

4 A. Diesel fuel, yeah. We were still selling gas. And we
5 were -- had pretty much -- the family decided to get out of the
6 gasoline business also. And we contacted ARDL to come out and
7 look at the site. And sometime before they came out, we had
8 noticed a soft spot out -- just outside the building and we had
9 suspected that -- that we had a leak there, so I contacted ARDL
10 and they came out and they -- we set up -- they said it was --
11 they took a soil -- I don't really know what procedure they used
12 but they said it was definitely -- we had a leak and we turned in
13 an incident number at that time.

14 Q. Okay. And that incident number to your knowledge is
15 91-1582; is that right?

16 A. Yeah, uh-huh.

17 Q. The soft spot you described, where was that located?

18 A. Uh-huh. It was on the east corner of the building.
19 Probably 10 foot away from the office store in the front --
20 towards the front part of the building.

21 Q. Was that adjacent to the gasoline tanks or diesel fuel
22 tanks or what?

23 A. Actually there was no tanks there at all. It's a long
24 line that runs alongside of the building from the gas tank and it

1 ran -- a line ran alongside the building all the way up to the
2 gas tank -- gas pumps in front.

3 Q. Were there any diesel fuel lines running along that
4 area?

5 A. No.

6 Q. ARDL was the environmental consultant on the job or at
7 the site prior to United Science Industries, Inc.?

8 A. Yes.

9 Q. And also known as USI. USI is the current environmental
10 consultant; is that correct?

11 A. Yes.

12 MR. MARTIN: I have no further questions of this witness.
13 I would refer the hearing officer to page 35 of the
14 administrative record which is the law of the underground storage
15 tank removal signed by Arthur Jacobs, the representative of the
16 office of the State Fire Marshal. It's dated April 8, 1999.
17 That law indicates that the two 2,000 gallon --

18 MR. KIM: I'm going to object. My objection was that I
19 think the document should speak for itself. And that I asked a
20 request of present counsel making the statements or making
21 cross-references from the documents as opposed to moving any
22 testimony on the documents, which is what my concern is. That
23 seemed like where he was going.

24 HEARING OFFICER SUDMAN: I'll sustain that. Mr. Martin,

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1 you can make any argument you want to bring.

2 MR. MARTIN: That won't be necessary. I wasn't here when I
3 -- when John was speaking with regards to that. I was just
4 drawing the hearing officer's attention to that. That's all I
5 have.

6 HEARING OFFICER SUDMAN: Okay. Mr. Kim, your witness.

7 MR. KIM: If my voice fades, just let me know. I'll sit
8 close. First of all, I did have some preliminary that I should
9 have brought up earlier in the compilation of the administrative
10 record. There was a slight problem with our copier in the
11 handling of the pages. Pages 31, 32 and 33 of the administrative
12 record are slightly eschew. Page 31 is not really a concern
13 because all that is on that statement -- page is the Attachment B
14 and I think that's all that was found on there.

15 However, on pages 32 and 33 there's a letter there which is
16 cut off in part. However, if you look at pages 19 and 20 of the
17 administrative record, it is, in fact, the very same letter. So
18 although pages 32 and 33 were cut off, there's simply a duplicate
19 on what's found on pages 18 and 19.

20 HEARING OFFICER SUDMAN: Thank you for that clarification.

21 EX A M I N A T I O N

22 BY MR. KIM:

23 Q. Mr. Fincher, I just have a few questions for you.

24 A. Okay.

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1 Q. You stated that in 1980 -- Let me back up. Could you
2 say again when your involvement with Mick's Garage began, not so
3 much in terms of doing, you know, part-time work or other jobs,
4 but in your role as an officer in some capacity with the
5 business?

6 A. I would have to say my biggest role I took on where --
7 yeah, maybe not an officer. When I took over some of the book
8 work in '83.

9 Q. Okay. So in 1992, is it safe to say you had direct
10 involvement in the management and operation of Mick's Garage?

11 A. Yes.

12 Q. And in 1992 are you aware of Mick's Garage having
13 submitted a request for reimbursement from the Underground
14 Storage Tank Fund to the Illinois EPA? Actually let me correct
15 that. It was submitted by Mick's Garage in November of 1991, do
16 you recall that?

17 A. Yes.

18 Q. Do you recall that a decision was issued by the
Illinois
19 EPA in February of 1992?

20 A. To be honest with you, I couldn't -- I couldn't put it
21 to the dates, yeah.

22 Q. I understand. Could I ask the -- I'd give you my copy
23 but I would slide back and forth. Can I ask the hearing officer
24 to show you copies of the administrative record?

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1 HEARING OFFICER SUDMAN: Sure. What pages?

2 MR. KIM: Pages 1 and 2.

3 Q. (By Mr. Kim) Just to clarify, when I say -- when I
4 refer to pages in the record, I'm referring to paginated
5 documents, not the index that accompany the record itself. But
6 page 1 and page 2 depicts a letter dated February 7, 1992, sent
7 by the Illinois EPA to Mick's Garage to your attention; is that
8 correct?

9 A. Yes.

10 Q. Do you recall receiving that letter?

11 A. Yes.

12 Q. And could you look on pages 3 -- look to page 3 of the
13 administrative record? That page depicts a letter dated March 9,
14 1992, sent by the Illinois EPA to Mick's Garage to your
15 attention; is that correct?

16 A. Yes.

17 Q. Do you recall receiving that letter?

18 A. Yes.

19 Q. At the time that the reimbursement request was submitted
20 -- in November of 1991 was submitted, it was still your
21 assumption that there was a leak from somewhere in the line of
22 the two 2,000 diesel tanks; is that correct? I'm referring to
23 November 1991.

24 A. I don't think that we determined even at that time

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1 that --

2 Q. I'm not asking what you determined. What I'm asking is,
3 was it your assumption in November 1991 that there was a leak
4 from somewhere in the diesel tank line to the two 2,000 gallon
5 tanks? Yes or no?

6 A. The reason why I'm hesitating is that I'm -- I'm trying
7 to remember when somebody described the system of how the system
8 works and that way I would have formulated, you know, changed my
9 mind, opinion if there was a leak there.

10 Q. But you don't -- Is it your testimony you don't exactly
11 know when you determined in your mind that there was no leak from
12 the two 2,000 gallon tanks?

13 A. The only way I knew for certain is when they dug it up
14 and there was no -- well, there was -- you know, that the
15 contamination wasn't there. But in the meantime we had
16 investigated into the way the system operates and actually
17 removed the pump off the island and found the pump was cracked so
18 -- but I'm not really sure what date that happened.

19 Q. Okay. Let's take this one step at a time. The tanks
20 were removed in April of 1999; is that correct?

21 A. Yes.

22 Q. You believe as of that date there was no release or leak
23 in the diesel tanks or lines; is that correct?

24 A. Yes.

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1 Q. Up until that date from the 1980s, whenever this
2 accident occurred, you can't specifically say when you came to
3 believe that there was no leak; is that correct?

4 A. Actually I never -- I just made an assumption that there
5 was a leak but I really never had any knowledge if there was a
6 leak.

7 Q. All right. I never asked you if you had knowledge. I'm
8 asking about your assumption. So is it your testimony that in
9 November 1991, it was still your assumption, that there was a
10 leak from two 2,000 diesel tanks or their lines; is that correct?

11 A. Yes.

12 Q. And for that matter moving up a little bit to February
13 of 1992, was that still your assumption?

14 A. Well, it -- the -- the pump -- we removed the pump since
15 we weren't selling fuel, we removed the pump right around that
16 time and found that the system was likely so it was right around
17 in there that -- that I decided that there wasn't a leak there,
18 so I'm not really sure exactly what -- I don't have any
19 documentation of when we actually took that pump up. It was in
20 that time period because we were going to decide we were never
21 going to get back in the fuel business.

22 Q. How about -- Let's try this. As of March of 1992, and
23 specifically March 9 of 1992 which is the date on the letter
24 which is page 3 of the administrative record, had you ever

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1 conveyed to the Illinois EPA that you did not believe there was a
2 leak from the two 2,000 gallon diesel tanks or their lines?

3 A. Yeah, that was the reason why I felt this was an
4 incorrect deductible application because at that time I -- I
5 understood that this was -- there was not a leak and this was
6 incorrectly -- that I incorrectly put that down and that's why
7 when I -- when we received -- I received this letter, that I
felt

8 like it was in error because there was no -- there was no leak,
9 yes.

10 Q. Okay. Do you know to your -- the best of your
11 recollection whether an appeal was ever filed of either the
12 February 7, 1992, final decision or the March 9, 1992, final
13 decision?

14 A. Not to my knowledge. I remembered I had initially --
we
15 had contacted a lawyer in Springfield to look over the
paperwork

16 to see if she would want to put together something for us to
17 appeal it, and we never went through with it.

18 Q. So your contact decided -- you never filed an appeal
of
19 either the February 7, 1992, or March 9, 1992, final decision;
is
20 that correct?

21 A. Not to my knowledge.

22 Q. Do we have an extra copy -- Does he have a copy of the

23 exhibit that he can look at, your Petitioner's Exhibit 1?

24 HEARING OFFICER SUDMAN: He can look at mine.

24 KEEFE REPORTING COMPANY

1 MR. KIM: Okay.

2 Q. (By Mr. Kim) If you could direct your attention to
3 Petitioner's Exhibit 1 and I'm going to reference the page by
the

4 -- on the top of these pages that are page numbers that
correlate

5 to the fax transmittal; and just for easier reference, I'm
going

6 to do that. I believe on the page I'm looking at, page 8 of
17,

7 so this would be about the -- actually the first page of the
8 exhibit begins page 2 of 17. But if you go -- thumb through,
9 eventually you find page 8 of 17. Have you found that?

10 A. Yes.

11 Q. And that is a form that was included as part of a
12 request for an eligibility and deductibility determination that
13 was submitted to the State Fire Marshal'S Office; is that
14 correct?

15 A. Yes.

16 Q. And that form was submitted sometime in early 2000; is
17 that correct? If you look on page -- what's stamped as page 5
of

18 17 of Exhibit 1, there's a stamp in the upper right-hand
corner.

19 That stamp states received March 31st, Department of Petroleum

20 Chemical, do you see that?

21 A. Yes.

22 Q. To the best of your knowledge is that about the time
23 that you, Mick's Garage, would have submitted this application
to
24 them in March of 2000?

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

2 Q. And I'm not asking for your -- If you can recall?

3 A. Yeah.

4 Q. Do you recall this application being submitted to the
5 State Fire Marshal'S Office?

6 A. Yes, it looks familiar.

7 Q. And on page -- what's marked as page 17 of -- or I'm
8 sorry, 7 of 17 of Exhibit 1, there's a certification in the
9 middle of the page and it's signed by Brad Richards with the
10 title of project manager of United Science Industries, do you see
11 that?

12 A. Yes.

13 Q. And that indicates that Mr. Richards was signing as
14 agent of Mick's Garage; is that correct?

15 A. Yes.

16 Q. And is that -- To the best of your knowledge was
17 Mr. Richards acting in that capacity when he submitted this?

18 A. Yes.

19 Q. Okay. Let's turn back now then to page -- what's marked
20 as 17 of the exhibit. That is the first of two pages that lists
21 information concerning underground storage tanks at Mick's Garage
22 storage site; is that correct?

23 A. Yes.

24 Q. And the information there includes information such as

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1 product code, which relates to the material that was in the
2 tanks, the size of the tanks, date of installation, date taken
3 out of service, the date that the tank was removed, the date the
4 tank was registered, the -- what's referenced as the IEMA number,
5 the date IEMA was notified, the date the registration fees were
6 paid, whether the UST was released and whether the UST was legal
7 and in place; is that correct?

8 A. Yes.

9 Q. And for easier reference, the acronym IEMA stands for
10 Illinois Emergency Management Agency; is that right? As far as
11 you know?

12 A. Yes.

13 Q. I'm going to refer to IEMA and when I refer to UST, do
14 you understand that to be an underground storage tank?

15 A. Yes.

16 Q. All right. A lot of acronyms. On page -- what's
marked

17 as page 9 of 17 of that exhibit, we have some additional
18 information, same information, but just for the remainder of the
19 tank site; is that correct?

20 A. Yes.

21 Q. Now the information that's found on this document is
not

22 the same as the information that was presented to the IEMA when
23 the reimbursement application was submitted in November of 1991;

24 is that correct?

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2

1 A. Correct.

2 Q. And when I say information on this page, I'm referring
3 to actually both pages 8 of 17 and 9 of 17, is that still
4 correct?

5 A. Yes.

6 Q. The information found on that was included in this
7 application which ultimately led to the State Fire Marshal'S
8 office issuing a decision that you would be, and when I say you,
9 I mean, Mick's Garage; that Mick's Garage would be submitted to a
10 \$15,000 deductible; is that right?

11 A. Yes.

12 Q. If you now -- In Exhibit 1 turn to page 16 of 17.
13 That's another sheet that as part of an eligibility and
14 deductibility application that would be sent to IEMA; is that
15 correct?

16 A. Yes.

17 Q. In the bottom left-hand corner of that page there's a
18 stamp that says received September 11, 2000, Division of
19 Petroleum Chemical Safety; is that right?

20 A. Yes.

21 Q. There's also another stamp in the different corner of
22 the page that says received August 1, I think, of 2000, Division
23 of Petroleum Chemical Safety, do you see that?

24 A. Yes.

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1 Q. And I'm not sure why we have two stamps in there. But
2 is it safe to say that sometime between August and September this
3 information was submitted to OSFM by Mick's Garage?

4 A. Yes.

5 Q. Actually I think that's supposed to be August 10.
6 There's a clearer stamp on what is marked on page 13 of 17.
7 Anyway, the information found on what's marked page 16 of 17
8 carries over to what's marked page 17 of 17; is that right?

9 A. Yes.

10 Q. And the information that's found on these two pages
11 differs from the information that was submitted to the Illinois
12 EPA in November of 1991; is that right?

13 A. I'm not sure on this one. Is there --

14 Q. Well, yeah, you're right. There's a lot of information.
15 Let me be more specific. For example, when you submitted the
16 application, you didn't have a removal date; is that correct?

17 A. Yes.

18 Q. And is it possible that information, such as the
19 incident number or the date that IEMA was notified, would have
20 been different?

21 A. Well, it -- the date IEMA -- the date that IEMA notified
22 shouldn't have been any different. I don't understand why that
23 would be different.

24 Q. Okay. How about the information concerning whether the

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1 individual or representative storage underground tank would have
2 been released, would that have been the same?

3 A. That would have been different.

4 Q. Okay. And carrying the information found on pages 16 of
5 17, 17 of 17 of the exhibit, the information found earlier on
6 pages 8 of 17 and 9 of 17 of the exhibit, basically what I'm
7 asking you to do is look at the two forms from the earlier
8 submittal to OSFM and the older submittal of OSFM both taking
9 place in 2000. The information on those two forms differs in
10 terms of IEMA number, date IEMA notified and whether or not the
11 underground storage tank had a release for different tanks; is
12 that correct?

13 A. Yes.

14 Q. And the second more recent information found on pages 16
15 of 17 and 17 of 17 ultimately left to OSFM issuing a new
16 deductible determination of \$10,000 being applicable to Mick's
17 Garage site; is that correct?

18 A. Yes.

19 MR. KIM: That's all I have.

20 HEARING OFFICER SUDMAN: Any redirect?

21 MR. MARTIN: Yes, briefly.

22 EX A M I N A T I O N

23 BY MR. MARTIN:

24 Q. Steve, just to clarify, make sure that I heard you

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1 correctly, sometime around the issuance of the IEPA's letter of
2 February of 2002, you, at Mick's Garage, had pulled the pump and
3 discovered the type of system that was involved with the two
4 2,000 gallon diesel tanks; is that correct?

5 A. What -- what time did you say it was?

6 Q. Around February of 2000 -- February of 1992?

7 A. Yes.

8 Q. But you don't recall exactly when but sometime in that
9 time frame?

10 A. Yeah, it would have been -- because we at that period of
11 time were getting out of the business totally and we didn't find
12 it necessary to have an ornamentation around there so we just
13 decided to pull it.

14 Q. All right. Do you personally know why there's a
15 difference that Mr. Kim just questioned you about between the
16 pages 8 and 9 of 17 on Petitioner's Exhibit 1 and pages 16 and 17
17 of 17 of Petitioner's Exhibit 1?

18 A. From what I see is that there was a second IEMA incident
19 number issued and they, I believe, that US -- I -- I'm just
20 speculating on this, but I think where they were going to try to
21 get the clean-up under the second incident number instead of the
22 first one. That's why the numbers don't -- that's why some of
23 the inconsistencies -- there was a -- yeah, there was a second
24 IEMA number was issued in 4/5 of '99 when they were -- had

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1 removed a tank. And the Fire Marshal was on the premises and the
2 tank leaked when they took it out of the ground and they put --
3 and they did an incident number on that right then.

4 Q. That was one of the gasoline tanks?

5 A. That was actually another fuel tank that leaked back on
6 the corner of the property.

7 Q. Which one?

8 A. It was one -- it was one that -- that was one of them
9 that -- well, I don't -- actually --

10 Q. Let me ask you this. It wasn't one of the 2,000 gallon
11 diesel fuel tanks?

12 A. No, no.

13 Q. Is that the extent of your personal knowledge as to why
14 these two numbers --

15 A. That's the only thing that I see that's why they would
16 be different, but then again that would be a --

17 MR. MARTIN: Thank you. I don't have any other questions.

18 HEARING OFFICER SUDMAN: Anything further, Mr. Kim?

19 MR. KIM: Not -- not really. I don't have any recross but
20 while Mr. Fincher is on the stand, I only have one question. I
21 think it's probably been drawn out but I just want to make sure
22 so although this made -- this is kind of outside the scope of
23 what Mr. Martin was just asking. Instead of me calling him up as
24 a witness, just asking him one question. Can I just go ahead and

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1 ask him that now?

2 MR. MARTIN: No objection.

3 HEARING OFFICER SUDMAN: Okay. Go ahead.

4 E X A M I N A T I O N

5 BY MR. KIM:

6 Q. The question I had, we were talking about two different
7 incident numbers. I want to make sure we're clear on the date of
8 the first incident number. When we say the first incident
9 number, we're referring to Incident No. 91-1582, is that your
10 understanding?

11 A. Yes.

12 Q. And to the best of your recollection was that -- is that
13 corresponding to a release that was reported to IEMA on June 11
14 of 1991?

15 A. Yes.

16 MR. KIM: That's all I have.

17 HEARING OFFICER SUDMAN: Thank you. If there's nothing
18 further for Mr. Fincher, thank you. You may step down. And
19 Mr. Martin has --

20 MR. MARTIN: Can you come back? I have no other witnesses
21 to tender.

22 HEARING OFFICER SUDMAN: Okay. Mr. Kim, you may call your
23 next witness.

24 MR. KIM: We call John Barrett.

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1 HEARING OFFICER SUDMAN: Will the court reporter swear the
2 witness.

3 WHEREUPON:

4 JOHN BARRETT,
5 called as a witness herein, having been first duly sworn,
6 deposeeth and saith as follows:

7 EX A M I N A T I O N

8 BY MR. KIM:

9 Q. Could you state your name for the record and spell it,
10 please?

11 A. John Barrett, B-A-R-R-E-T-T.

12 Q. And, Mr. Barrett, who are you presently employed by?

13 A. I work for the Illinois Environmental Protection Agency,
14 Division of Remediation, Leaking Underground Storage Tank
15 Section.

16 Q. And what is your job title and what are your job duties?

17 A. I'm Environmental Protection specialist and I'm assigned
18 as a project manager for various leaking underground storage tank
19 sites.

20 Q. Are you familiar with the Mick's Garage site?

21 A. Yes, sir, I am.

22 MR. KIM: And again, can I ask the hearing officer again to
23 show Mr. Barrett the administrative record?

24 HEARING OFFICER SUDMAN: (Hands document to witness.)

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1 Q. (By Mr. Kim) Would you please look to pages 36, 37 and
2 38 of the administrative record? And when you're done, can you
3 tell us if you're familiar with that document and, if so,
4 describe what that document is?

5 A. Yes, sir, it's a letter that I prepared responding to an
6 inquiry from United Science Industries concerning the -- This
7 phone is ringing.

8 MR. KIM: Off the record.

9 (A discussion was held off the record.)

10 A. This is a letter that I wrote as a response to an
11 inquiry from United Science Industries concerning which
12 deductible we would be assessing on Mick's Garage.

13 Q. (By Mr. Kim) And when you say which deductible, was
14 there a -- were there more than one deductible that were being
15 considered?

16 A. Yes, sir. The original question called in by United
17 Science Industries which -- which of the two, the 10 or the
18 15,000, would we assess. I answered that I would have to look
19 into it and review the file, see what I can come up with.

20 Q. Okay. And when you refer to a 10 to \$15,000 deductible,
21 who was the agency that was responsible for issuing those
22 amounts?

23 A. Those were issued by the Office of the State Fire
24 Marshal.

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1 Q. And did -- in the June of 2003 letter, what decision did
2 the Illinois EPA ultimately decide to take?

3 A. It gave them --

4 Q. I'm sorry.

5 A. After looking in the file, I found a third deductible in
6 the file which was the \$50,000 deductible that the Illinois
7 Environmental Protection Agency had originally assessed. I
8 discussed all three of these with my supervisor and we decided
9 that the \$50,000 deductible would be the appropriate one since it
10 was the first one made and nothing had come in to change that
11 decision.

12 Q. And I'm going to just briefly describe what's
13 Petitioner's Exhibit 1, and if I mischaracterize it, then please
14 correct me. I'm just doing this sort of to speed things up. The
15 documents found in Petitioner's Exhibit 1 consist of the two OSFM
16 decision. I think you referenced the \$10,000 deductible decision
17 and the \$15,000 deductible decision and along with the
18 corresponding applications that led up to the issuance of those
19 decisions. Do you -- Was this information that's found in
20 Petitioner's Exhibit 1 considered by you when you made your final
21 decision?

22 A. When I made the final decision, that was not available.
23 Only the letter from the Fire Marshal without the application. I
24 did get the application later and was able to review it.

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1 Q. Okay. And when you say the letter, which letter are you
2 referring to?

3 A. It is included as part of the petitioner's exhibit that
4 would be pages 2 of 17, 3 and 4 of 17. The application was not
5 included, plus the other letter I believe is in here also further
6 back.

7 Q. Okay. If -- Forget that. When you say that the two
8 OSFM decisions, the \$10,000 deductible, the \$15,000 deductible
9 decision, were considered, were there any factors or was there
10 any kind of consideration that was given as to why those two
11 decisions or one of those two decisions should not be taken up as
12 opposed to the decision that was finally made?

13 A. The two letters referenced different tanks. They were
14 confusing as to what tank was what. I was aware that 15 tanks
15 had been found on that site and removed. However, one of the
16 letters only talked about 11 of the tanks, so it was confusing to
17 me as to what was what. When I explained all this to my
18 supervisor, he agreed it was confusing, and we said, well, let's
19 go back to the original lease, which was listed as gasoline, and
20 we reviewed those tanks. He said, okay. There's nothing to
21 change the 50,000. We will go with that one.

22 Q. If the information found in Petitioner's Exhibit 1, all
23 that information had been in -- in your possession at the time of
24 your decision, would your decision have changed?

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1 A. Probably not.

2 MR. KIM: I think that's all I have.

3 HEARING OFFICER SUDMAN: Thank you. Mr. Martin?

4 MR. MARTIN: Thank you.

5 E X A M I N A T I O N

6 BY MR. MARTIN:

7 Q. Why would your decision not change given that additional
8 information?

9 A. The information in the petitioner's exhibit still
10 indicated that the original tanks that we assessed the \$50,000
11 deductible had leaked and there were other tanks that -- in one
12 letter said it did leak and the other one said it didn't. It was
13 still confusing.

14 Q. Was it still confusing to you after Mr. Pulfrey of USI
15 had submitted a letter of explanation also attaching
16 Mr. Fincher's letter of explanation?

17 A. At that point it was less confusing. I had also gotten
18 all the applications. I put together a table of my own to figure
19 out what tanks were what. I was able to figure it out at that
20 point.

21 Q. Okay. Once you were able to figure it out, primarily
22 that the two 2,000 gallon diesel tanks had not leaked, that did
23 not affect your decision?

24 A. The original report of the release was a leak of the

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1 gasoline tanks, not the diesel tanks.

2 Q. That original report takes us back to 1991?

3 A. Yes, sir.

4 Q. And the 1991 report dealt with tanks that had been
5 registered -- excuse me just one moment -- on May 5, 1986?

6 A. That sounds right, yes.

7 Q. And you formulated your decision once you had all of the
8 additional information, letters of explanation, additional
9 applications and so forth, all the information that you had, and
10 came to your conclusion that it was or should remain in the
11 \$50,000 deductible, can you -- can you provide some details as to
12 your thought process on that, your analysis?

13 A. I'm not sure if you have the correct time line. We made
14 the decision before I had all of this information.

15 Q. And the decision you're referring to would be February
16 7, 1992, and then March 9, 1992, decisions, is that what you're
17 referring to?

18 A. No, the January 10th --

19 Q. Okay. All right.

20 A. -- decision.

21 Q. January 10th of?

22 A. '03.

23 Q. '03. All right. Just so I understand, you did or did
24 not have all of the -- that information by the January 10, '03,

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1 decision?

2 MR. KIM: I'm going to object. Just maybe you can clarify
3 what you mean by all that information.

4 MR. MARTIN: Well, I mentioned that previously in my
5 question.

6 Q. (By Mr. Martin) That would be all of the letters of
7 explanation provided by Mr. Pulfrey of United Science Industries
8 with the attached letter of Mr. Fincher, with the additional
9 applications that had been submitted, that's what I mean about by
10 all of that information. Did you have all of that in hand
11 available for your review and analysis by the January 10, 2003,
12 decision?

13 A. I believe I had Mr. Pulfrey's information. I don't
14 think I had the applications for reimbursement from the Office of
15 the State Fire Marshal.

16 Q. By January 10 of 2003?

17 A. I believe that is correct, yes.

18 Q. But since that time you have been able to review that
19 information?

20 A. Yes.

21 Q. As you sit here today, does that not change your opinion
22 of what the deductible should be?

23 MR. KIM: I'm going to object only in that whatever
24 conclusions -- whatever conclusions that were reached after the

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1 final decision are really not german to what the final decision
2 itself is correct which only was based on the information that
3 was made at the time of the decision. It's speculative and it is
4 an irrelevant question.

5 HEARING OFFICER SUDMAN: Mr. Martin?

6 MR. MARTIN: Well, I don't think it's irrelevant for
7 purposes of this hearing. That's exactly what this is about and
8 the additional information that we were talking about here is now
9 a supplement to the record or included in the administrative
10 record by virtue of Petitioner's Exhibit 1, if I'm not mistaken,
11 so that is german to this proceeding. That is german to the
12 conclusion that could be reached now. That's why we're here.

13 MR. KIM: Well, I think he can certainly predate the
14 decision. That's why we don't have an objection to it being
15 considered by the Board but since -- I think his question is
16 more, you know, after you made your final decision, what would
17 your conclusion be now and it really is irrelevant what the
18 conclusion is now, after the ultimate appeal, is what was decided
19 in January of 2000, whatever the date is. That's the -- the only
20 objection.

21 HEARING OFFICER SUDMAN: If it was not your question, would
22 you please clarify what the question was or go on?

23 MR. MARTIN: Let me think about it for a while.

24 HEARING OFFICER SUDMAN: Okay.

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1 MR. MARTIN: Let me go on to something else and come back
2 to it.

3 Q. (By Mr. Martin) Mr. Barrett, I want to direct your
4 attention to page 1 of the administrative record. Have you found
5 that?

6 A. Yes.

7 Q. That's the letter dated February 7, 1992, from the IEPA?

8 A. Correct.

9 Q. There is reference in the fourth paragraph, down the
10 last three lines of the fourth paragraph, says the review of
11 January 29, 1992, indicates and you see it goes on there?

12 A. Yes, yes.

13 Q. It appears maybe a word or two is missing from that.
14 Review of the January 29, 1992, something seems it should be
15 included there?

16 A. It appears that way, yes.

17 Q. Okay. All right. Do you have any idea what is included
18 there?

19 A. No, sir, I do not.

20 Q. And then referring you to page 3 of the administrative
21 record, the March 9, 1992, letter from IEPA --

22 A. Yes, sir.

23 Q. -- we have in the second paragraph the last three lines
24 it looks like almost the same sentence. The review of January

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1 29, 1992, and it appears a word should be included and missing?

2 A. Sure.

3 Q. Okay. But that does reference something indicating that
4 the owner-operator of Mick's Garage was aware of a release in --
5 from the UST system in 1980; correct? I mean, that's what it
6 says.

7 A. That is what it says, yes. If I may, that sentence, the
8 review of January 29, 1992, if review is the subject, then that's
9 -- it could stand without any additional wording.

10 Q. Okay. All right. But then the next line, second
11 paragraph down, is according to the application both of the
12 20,000 gallon diesel fuel tanks, we're referring to the two 2,000
13 gallon tanks; is that correct?

14 A. I can only assume so.

15 Q. Well, for clarification purpose I will refer you to page
16 4 of the administrative record as to where that clarification is
17 made.

18 A. Okay.

19 Q. Okay.

20 A. Yes.

21 Q. But again, this is indicating that from the information
22 available at that time, a \$50,000 deductible should have applied
23 because there was, at least, a contingency of knowledge of a leak
24 from these two 2,000 gallon tanks in 1980, would that be a

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1 correct summary?

2 A. That is what it appears to say, yes.

3 Q. Thank you. Now directing your attention to page 14 of
4 the administrative record which is a letter dated August 8th,
5 2002, from Robert J. Pulfrey, project manager, at United Science
6 Industries, Inc., do you see that letter?

7 A. Yes.

8 Q. In that letter Mr. Pulfrey includes some attachments; is
9 that correct?

10 A. Yes.

11 Q. One of which is reflected on page 19 of the
12 administrative record which is a letter dated July 31, 2002, from
13 Steve Fincher to Mr. Pulfrey?

14 A. Yes.

15 Q. And you had that available to you prior to your January
16 10 of 2003 decision?

17 A. Yes, I did.

18 Q. Given this information from Mr. Pulfrey and from
19 Mr. Fincher, is it your testimony that that did not change your
20 opinion as to what the deductible should apply?

21 A. It did not because this talks about the diesel tanks.
22 The deductible was assessed because the report was of a gasoline
23 leak.

24 Q. And the gasoline leak was reported in 1991?

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1 A. Yes.

2 Q. So your \$50,000 deductible determination, is it correct,
3 had nothing to do with the diesel tank leaking or not leaking
4 issue?

5 A. I cannot answer that. I did not make that
6 determination. The original \$50,000 deductible I did not assess.

7 Q. Okay. So did -- did the issue of the leaking or not
8 leaking diesel tank system come into your decision at all in any
9 way that you issued in January of 2003?

10 A. No.

11 Q. One moment.

12 MR. MARTIN: I don't think I have any other questions.
13 Thank you.

14 HEARING OFFICER SUDMAN: Mr. Kim?

15 E X A M I N A T I O N

16 BY MR. KIM:

17 Q. Just a minor -- sort of to clarify. Mr. Barrett, I
18 think you testified that you had prepared a table based upon some
19 information that you had put together and there's no such table
20 that's found in the administrative record, was that table
21 prepared before or after the January 2003 final decision on
22 appeal?

23 A. After.

24 MR. KIM: Okay. That's all I have.

1 HEARING OFFICER SUDMAN: Thank you, Mr. Barrett.

Before we

2 hear closing arguments, I would like to go off the record to
3 discuss the transcript availability and briefing schedule
which

4 will then be read into the record.

5 (A discussion was held off the record.)

6 HEARING OFFICER SUDMAN: We have just had an off-the-
record

7 discussion regarding post-hearing briefs. The parties have
8 agreed to a briefing schedule as follows: The petitioner's
brief

9 will be due by August 18; respondent's brief will be due by
10 September 16 and there will be no reply brief. The mailbox
rule

11 will not apply; however, the parties are authorized to file
12 facsimile copies with the Clerk of the Board with originals
to

13 follow in the mail. The transcript of these proceedings will
be

14 available from the court reporter by July 21st and will be
posted

15 on the Board's website as soon as possible, hopefully no
later

16 than July 22nd. The public comment deadline is July 31st.

17 Public comment must be filed in accordance with Section

101.628

18 of the Board's procedural rules. Mr. Martin, would you like
to

19 make a closing argument?

20 MR. MARTIN: Yes, thank you. This project is just
wrought

21 with mistakes and errors in the information. And what we
come to

22 today, for purposes of this hearing, is what is the true --
what

23 are the true facts.

24 And true facts are these: Mr. Fincher had erroneously

1 assumed that a line to the two 2,000 gallon diesel tanks had
2 leaked as a result of a tractor-trailer accident in a pump
3 connected to those two tanks in around 1980. He held that
4 assumption. I believe his testimony reflects until sometime in
5 '91 or '92 when the pump assembly was taken apart and was
6 discovered that the pump was a suction pump. A suction pump he
7 described with a -- was malfunctioning, would not allow any
8 product to come from the tank to the line. It remains in the
9 tank. The suction pump he testified was not operating and so
10 there's no possibility for any product to be in the line for a
11 leak to have occurred. It remained in the tank.

12 He also testified having being present during the pull of
13 those two 2,000 gallon diesel tanks in 1999 in which he observed,
14 and the administrative record also reflects observation of the
15 Fire Marshal's representative, that there was no product leaking
16 from those two 2,000 gallon diesel tanks or one associated with
17 them. So we have an erroneous assumption that has been later
18 corrected in around '91 or '92.

19 That information is shared with the Environmental
20 Protection Agency. Prior to the decision that came out in
21 January of 2003, the initial decision of \$50,000 issued by the
22 IEPA in 1992 in February and March, I believe it was, appears to
23 again be based upon the reporting of a suspected leak or
24 constructive knowledge of a suspected leak from these diesel

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1 tanks, which later again was corrected. There was no such leak,
2 so there's no constructive knowledge of a non-existed fact. That
3 information was made available to the Agency.

4 Mr. Barrett then testifies that the 50,000 deductible
5 previously determined in 1992 by the Agency should remain 50,000
6 now for the purposes of the decision issued in January of 2003
7 because there was a report in 1991 of a gasoline tank leaking.
8 So when I look at Section 57.9 of the Environmental Protection
9 Act, 459 ILCS 26/57.9(b). We deal with a general reference of
10 the \$10,000 deductible applicable except it won't be \$10,000
11 under other circumstances. The \$50,000 deductible applies if any
12 of the underground storage tanks were registered prior to July
13 28th, 1989, and the State received notice of a confirmed release
14 prior to July 28, 1989.

15 What we have here, whether it's diesel fuel tanks, gasoline
16 tanks, or storage tanks that were registered prior to July 28,
17 1989, but notice of a confirmed release received by the Agency
18 after July 28, 1989, now Mr. Barrett's own testimony, 1991. So
19 in that circumstance we don't have a \$50,000 deductible
20 applicable any way you look at it.

21 I submit we have \$10,000 deductible applicable but I will
22 recognize the possibility of a \$15,000 deductible because
23 subparagraph B3 of that section, Section 57.9, indicates that a
24 deductible of 15,000 will apply to one of those but not all of

1 the underground storage tanks were registered prior to July 28,
2 1989, and the State received notice of the confirmed release on
3 or after July 28th, 1989. That's what we have. We have tanks

4 registered
prior to July 28,
1989, we have a
confirmed release
on

5 or after
July 28th, 1989.

6 So at
best I submit a
\$10,000
deductible. At
the very

7 least I
submit a \$15,000
deductible and
there's no way a
\$50,000

8 deductible
is applicable to
this.

9

HEARING OFFICER

SUDMAN: Would

you like to make
a closing

10 argument?

11 MR.

KIM: No, the EPA
waives closing
argument.

12

HEARING OFFICER

SUDMAN: Again, I
will note for the
record

13 that there
are no members of
the public
present. So I
will

14 proceed to
make a statement
as to the
credibility of
witnesses

15 testifying
during this
hearing. Based
on my legal
judgment and

16 experience,
I find all of the
witnesses
testifying to be
17 credible.

At this time I
will conclude the
proceedings. I
thank

18 all of you
for your
participation and
we stand
adjourned. Thank

19 you.

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STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 49 pages comprise a true, complete and correct transcript of the proceedings held on the 16th day of July A.D., 2003, at the offices of the Madison County Administration Building, County Board Room 203, 157 North Main Street, Edwardsville, Illinois, in the case of MICK'S GARAGE versus ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, in proceedings held before Hearing Officer Carol Sudman, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 17th day of July A.D., 2003.

Beverly S. Hopkins
Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

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