

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OF THE  
STATE OF ILLINOIS

2

3

PEOPLE OF THE STATE OF ILLINOIS, )

4

5

Complainant, )

6

vs ) No. PCB 96-98

7

SKOKIE VALLEY ASPHALT CO., INC., )

EDWIN L. FREDERICK, JR., )

8

individually and as owner and )

president of SKOKIE VALLEY )

9

ASPHALT CO., INC., and )

RICHARD J. FREDERICK, individually )

10

and as owner and vice president of )

SKOKIE VALLEY ASPHALT CO., INC., )

11

Respondents. )

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TRANSCRIPT OF PROCEEDINGS held in the

15

hearing of the above-entitled matter, taken

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stenographically by Maria E. Shockey, CSR, before

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CAROL SUDMAN, Hearing Officer, at the Libertyville

18

Village Hall, 118 West Cook Street, Libertyville,

19

Illinois, on the 30th of October, A.D., 2003, at

20

9:00 a.m.

21

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23

24

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

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ILLINOIS POLLUTION CONTROL BOARD,  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9274  
(217) 524-8509  
BY: MS. CAROL SUDMAN, HEARING OFFICER

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OFFICE OF THE ILLINOIS ATTORNEY GENERAL,  
188 West Randolph Street  
20th Floor  
Chicago, Illinois 60601  
(312) 814-5282  
BY: MR. MITCHELL L. COHEN  
MR. BERNARD J. MURPHY

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Appeared on behalf of the Complainant;

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LAW OFFICE OF MICHAEL B. JAWGIEL, P.C.,  
5487 North Milwaukee Avenue  
Chicago, Illinois 60630  
(773) 774-0814  
BY: MR. MICHAEL B. JAWGIEL

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- AND -

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LAW OFFICE OF DAVID S. O'NEILL,  
5487 North Milwaukee Avenue  
Chicago, Illinois 60630-1249  
(773) 792-1333  
BY: MR. DAVID S. O'NEILL

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Appeared on behalf of the Respondents.

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1                   HEARING OFFICER SUDMAN: Good morning.  
2                   My name is Carol Sudman and I'm a hearing  
3                   officer with the Pollution Control Board.  
4                   This is the hearing for PCB 96-98, People  
5                   versus Skokie Valley Asphalt, Edwin L.  
6                   Frederick, Jr., and Richard J. Frederick.

7                   It is October 30, 2003 and we are  
8                   beginning at 9:00 a.m. I will note for the  
9                   record that there are no members of the  
10                  public present. Members of the public are  
11                  allowed to provide public comment if they so  
12                  choose.

13                  At issue in this case are the  
14                  allegations that respondents violated various  
15                  provisions of the Environment Protection Act  
16                  and the Board's regulations relating to water  
17                  pollution. The complaint concerns  
18                  respondent's facility in Grayslake,  
19                  Lake County.

20                  You should know that it is the  
21                  Pollution Control Board and not me that will  
22                  make the final decision in this case. My  
23                  purpose is to conduct a hearing in a neutral

24

and orderly manner so that we have a clear

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1 record of the proceedings. I will also  
2 assess the credibility of any witnesses on  
3 the record at the end of the hearing.

4 This hearing was noticed pursuant  
5 to the Act and the Board's rules and will be  
6 conducted pursuant to Sections 101.600  
7 through 101.632 of the Board's procedural  
8 rules.

9 At this time, I would like to ask  
10 the parties to please make their appearances  
11 on the record.

12 MR. COHEN: Madam Hearing Officer,  
13 Mitchell Cohen, Assistant Attorney General,  
14 representing the People of the State of  
15 Illinois.

16 HEARING OFFICER SUDMAN: Thank you.

17 MR. MURPHY: Assistant Attorney  
18 General Bernard J. Murphy, Jr., representing  
19 the State of Illinois.

20 MR. O'NEILL: David O'Neill  
21 representing the respondents.

22 MR. JAWGIEL: And Michael Jawgiel

23 representing the respondents as well.

24 HEARING OFFICER SUDMAN: Thank you

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1 very much.

2 Would the People like to give an  
3 opening statement?

4 MR. COHEN: Yes.

5 OPENING STATEMENT

6 BY MR. COHEN:

7 Madam Hearing Officer, Counselors,  
8 beginning in December 1994 and continuing  
9 through April 1995, the water in the Avon  
10 drainage ditch had an oily sheen. The Avon  
11 Fremont drainage ditch is a water of the  
12 State that flows north past and not far from  
13 the Skokie Valley Asphalt Company's site into  
14 Third Lake, another water of the State.

15 The Skokie Valley Asphalt Company,  
16 Inc., what used to be Liberty Asphalt, is  
17 located in Grayslake, Lake County, Illinois.  
18 When Skokie Valley Asphalt was in business,  
19 it was owned and operated by respondents,  
20 Edwin L. Frederick, Jr., who goes by Larry,  
21 and his brother Richard J. Frederick.

22 Skokie Valley Asphalt or Liberty  
23 Asphalt used to produce asphalt at the  
24 Grayslake site. More recently before the

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1 Frederick brothers sold their business, the  
2 site was used for vehicle storage,  
3 dispatching, and material storage. The  
4 Frederick brothers ran an asphalt paving  
5 business from the Grayslake site.

6 The area around the site is  
7 farmland. There's also a residential area  
8 and a nursery. There's no other industry,  
9 factories or gas stations nearby. There's  
10 just farm fields between the Skokie Valley  
11 Asphalt site and the Avon drainage ditch.

12 In April of 1995, the Fredericks  
13 discovered a drain tile that ran through  
14 their property. The water in that drain tile  
15 flowed toward the Avon drainage ditch. The  
16 water in that drain tile also had an oily  
17 sheen.

18 Finally, the Frederick brothers  
19 contacted an environmental engineer. They  
20 cut off the flow of oil to the Avon drainage

21 ditch, began looking for on-site sources and  
22 solutions and are still in the process of  
23 remediating the site in 2003.

24 You see, the water pollution event

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1 alleged in the second amended complaint is  
2 really the culmination of a long history of  
3 environmental problems at the Skokie Valley  
4 Asphalt site. The problems began many years  
5 before, most dealing with water quality  
6 issues. As a result, the Illinois  
7 Environmental Protection Agency issued Skokie  
8 Valley Asphalt Company a storm water NPDES  
9 permit in 1986.

10 You're going to hear testimony  
11 from Mike Garretson. He works for the  
12 Illinois Environmental Protection Agency;  
13 he has for over 20 years. He works for the  
14 division of water pollution control  
15 compliance assurance section. He will  
16 explain about the compliance assurance  
17 section, how they use NPDES permits and  
18 discharge monitoring reports or DMRs.

19 Mr. Garretson has been with the

20 Illinois EPA long enough to know how this  
21 system worked back in the '80s and early '90s  
22 when Skokie Valley Asphalt was first issued  
23 their permit. He was explaining Skokie  
24 Valley Asphalt's DMR reporting requirements

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1 and discharge concentration limits based on  
2 their permit.

3 He will describe a number of  
4 months when Skokie Valley Asphalt failed to  
5 file any DMRs in two separate two-month  
6 period where Skokie Valley Asphalt filed  
7 identical DMRs. Except for the dates on the  
8 DMRs, the scientific data was identical,  
9 highly unusual.

10 Mr. Garretson will also testify to  
11 a number of months where Skokie Valley  
12 Asphalt reported excessive discharge  
13 concentrations of total suspended solids in  
14 their DMRs that they submitted to the  
15 Illinois EPA.

16 You will hear testimony from  
17 Chris Kallis. He works as a field inspector  
18 for the Illinois EPA Bureau of Water. He's

19           been doing this for over 20 years too. He's  
20           been inspecting the Skokie Valley Asphalt  
21           site in Grayslake since the 1980s.

22                         He's familiar with the  
23           environmental history of the site, Skokie  
24           Valley Asphalt's NPDES permit, and some of

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1           the events surrounding the late 1994, '95  
2           water pollution incident causing the oil  
3           sheen on the Avon drainage ditch.

4                         In March of 1995, Mr. Kallis took  
5           a sample of the effluent feeding into the  
6           Avon drainage ditch and had it tested for oil  
7           and grease concentrations. Don Klopke will  
8           also testify. He too works for the Illinois  
9           EPA and has for many years. He works for the  
10          office of emergency response.

11                        He'll explain why the office of  
12          emergency response was involved in an  
13          investigation at the Avon drainage ditch at  
14          the end of 1994, 1995. He'll explain why  
15          the USEPA, United States Environmental  
16          Protection Agency, became involved in that  
17          investigation. Mr. Klopke will also describe

18 his observations at the Avon drainage ditch  
19 in 1995 and how Skokie Valley Asphalt  
20 ultimately became involved in the clean-up of  
21 the ditch.

22 As I mentioned earlier, Skokie  
23 Valley Asphalt hired an environmental  
24 engineer in April of 1995 after discovering

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1 oil in a drain tile on their property. The  
2 engineer's name is James Huff. He will  
3 testify as well. The People expect Mr. Huff  
4 to testify about how he was contacted by  
5 Skokie Valley Asphalt, that a site visit was  
6 scheduled but before his site visit, Skokie  
7 Valley Asphalt called explaining that they  
8 had discovered oil in a field tile that ran  
9 through their property.

10 This discovery lead to a chain of  
11 events that continues in 2003, for example,  
12 the drain tile with oil in it was plugged so  
13 it no longer flowed to the Avon drainage  
14 ditch. Skokie Valley Asphalt placed oil  
15 absorbing booms in the Avon drainage ditch to  
16 prevent the oil from flowing north into Third

17 Lake.

18 A leaking underground storage tank  
19 was removed from the Skokie Valley Asphalt  
20 site and other on-site areas were remediated  
21 to remove oil contamination. Mr. Huff found  
22 these other areas of contaminating after  
23 learning about the history of the site from  
24 the Fredericks and digging test pits. He

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1 worked with and reported directly to the  
2 Frederick brothers.

3 With Mr. Huff's help, Skokie  
4 Valley Asphalt did apply to participate in  
5 the Illinois EPA site remediation program  
6 seeking a focused no further remediation  
7 letter, not in 1995 when the oil was  
8 discovered on site, it wasn't until 1998.  
9 That leaves the respondents, Larry and  
10 Richard Frederick. I already mentioned they  
11 owned and operated Skokie Valley Asphalt  
12 Company, 50/50.

13 They were responsible for the  
14 whole operation. They both dealt with the  
15 Illinois EPA and James Huff reports to both

16 of them. They both worked at the Skokie  
17 Valley Asphalt site in Grayslake for decades,  
18 that is, until 1998. In 1998, the Frederick  
19 brothers dissolved their corporations and in  
20 1998, the Frederick brothers sold their  
21 business, including the site in Grayslake for  
22 over  
23 \$8 million.

24 At the end of all the evidence, we

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1 expect each of the respondents to be found in  
2 violation of the Act and liable for all five  
3 counts alleged in the second amended  
4 complaint: Filing false reports, filing late  
5 to renew their permit, failing to comply with  
6 sampling and reporting requirements, water  
7 pollution, and violating effluent limits.

8 At that time, the People of the  
9 State of Illinois will ask this Board for  
10 cease and desist orders against the  
11 respondents, civil penalties, and all other  
12 remedies under the law and relief the Board  
13 deems appropriate.

14 HEARING OFFICER SUDMAN: Thank you.

15 Mr. Jawgiel, would you like to make an  
16 opening statement?

17 MR. JAWGIEL: Yes, very briefly. But  
18 I also would like to address when the --

19 HEARING OFFICER SUDMAN: The motions?

20 MR. JAWGIEL: Right, the motions.

21 HEARING OFFICER SUDMAN: Yes. Before  
22 the People present their case, I would ask  
23 that you --

24 MR. JAWGIEL: Renew those motions?

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1 HEARING OFFICER SUDMAN: Yes.

2 MR. JAWGIEL: Okay. I just wanted to  
3 make sure we're all on the same procedure;  
4 that's all.

5 HEARING OFFICER SUDMAN: Yes. Thank  
6 you.

7 MR. JAWGIEL: Thanks a lot.

8 OPENING STATEMENT

9 BY MR. JAWGIEL:

10 Counsels, Madam Hearing Officer,  
11 what's missing from the opening statement of  
12 the State is quite clear and it's glaring, it  
13 really is. What the evidence won't show is

14 as much as important as what the evidence  
15 will show.

16 And what the evidence won't show  
17 in this case is very simple. The evidence  
18 shows that anybody took the time out to take  
19 a sample from the site of Skokie Valley and  
20 match it to what was in the creek.

21 They're doing this clearly by  
22 smoke in mirrors. Nobody whether it's  
23 Mr. Kallis -- you'll hear him testify that he  
24 didn't even look to see where this drain tile

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1 ran. He didn't canvas the area for other  
2 businesses that may contribute to this. He  
3 doesn't know what's in the area at all.

4 You'll also hear from him in his  
5 testimony when we called him in our case in  
6 chief that he thought it was pure conjecture  
7 that the oil was coming from Skokie Valley.  
8 So we hear a lot about what the State says  
9 they're going to prove but the key is they  
10 can't prove that what was in that creek  
11 actually came from somewhere on Skokie Valley  
12 property. That's a very important issue.



12 have a situation where they seem to have  
13 picked on Skokie Valley and they did so in an  
14 untimely fashion. They waited on their  
15 hands. They sat on their hands and then they  
16 came years later and required these gentlemen  
17 and Skokie Valley to defend themselves.

18 And you'll hear numerable times  
19 during the course of this that a document is  
20 no longer in existence, that people cannot  
21 remember what was said, what was done, and  
22 all that plays into the fact that the State  
23 is trying to bring a case by delay and  
24 sandbagging.

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1 When we talk about the sampling  
2 procedures, you're going to see again there's  
3 no critique of how they took the sample.  
4 Nobody has the opinion that the sampling was  
5 done inappropriately. Nobody can tie in the  
6 fact that there was actually damage that lead  
7 into the waterways.

8 They'll tell you, oh, yes, well,  
9 the Avon Creek leads into Grayslake and also  
10 feeds into Third Lake, but there's no testing

11 that Grayslake or Third Lake was affected  
12 whatsoever by this and you won't hear that  
13 either.

14 At the close of our case, we will  
15 request that the Board find in favor of the  
16 respondents and we will seek our appropriate  
17 remedies from there as well.

18 Thank you.

19 HEARING OFFICER SUDMAN: Thank you.  
20 Before you have a seat, Mr. Jawgiel, would  
21 you like to now address your motions?

22 MR. JAWGIEL: Sure. Thank you.

23 Just for the record, these motions  
24 were presented in total two days ago, Madam

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1 Hearing Officer, is that correct?

2 HEARING OFFICER SUDMAN: I think it  
3 was October 27.

4 MR. JAWGIEL: 27th? It's all a blur.

5 In total we have a motion in  
6 limine. We also have various motions to  
7 bar -- one motion to bar Mr. Ken Savage,  
8 which apparently, Mr. Savage is not going to  
9 be a witness here today or tomorrow if I took

10 the State's opening statement to be correct.

11 MR. COHEN: Correct.

12 MR. JAWGIEL: So we can set that  
13 aside.

14 We do have a motion to bar or  
15 limit the testimony of Mr. Klopke, a motion  
16 to bar or limit the testimony of  
17 Mr. Garretson, a motion to bar or limit the  
18 testimony of Ms. Lavis, and apparently, she's  
19 not testifying either, so we'll set this  
20 aside.

21 So basically, we're down to our  
22 motions in limine, which they're a series of  
23 motions within --

24 HEARING OFFICER SUDMAN: Right. As I

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1 had told you yesterday, I will admit those  
2 into the record as if read. And my rulings  
3 that I made in my hearing officer order on  
4 October 28 will stand. I recall attaching  
5 those, so that will all be in the record for  
6 you, okay?

7 MR. JAWGIEL: Okay. Madam Hearing  
8 Officer, we will be renewing objections as

9 evidence is provided to preserve our right of  
10 appeal if this goes that far, but I think  
11 we're obligated to do so. We don't mean to  
12 be --

13 HEARING OFFICER SUDMAN: I mean, with  
14 some lines I may ask you to make a continuing  
15 objection just so that --

16 MR. JAWGIEL: That's fair enough.

17 HEARING OFFICER SUDMAN: -- we can  
18 move things along.

19 MR. JAWGIEL: As long as the record is  
20 clear on that issue.

21 HEARING OFFICER SUDMAN: Yes,  
22 absolutely.

23 MR. JAWGIEL: We're not trying to  
24 delay or by any means stretch this out.

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1 Would you like me to submit this  
2 to --

3 HEARING OFFICER SUDMAN: Yes, please.

4 MR. JAWGIEL: Those are the motions  
5 that we are standing on. The ones that I've  
6 redacted, I'll just take back to the desk.

7 HEARING OFFICER SUDMAN: Okay. Thank

8           you.  These will be admitted to the record  
9           and I will attach a copy of my October 28  
10          hearing officer order to the back of these.

11                         Are there anymore preliminary  
12          matters that we need to discuss before the  
13          People present their case?

14                         MR. COHEN:  I can't think of any.

15                         HEARING OFFICER SUDMAN:  Okay.

16                         MR. JAWGIEL:  Exclude witnesses, your  
17          Honor, of -- exclude witnesses who are  
18          nonparties to the testimony that's going to  
19          be provided here.  We would ask that  
20          witnesses who are either not the Fredericks  
21          or witnesses who are not the representatives  
22          of the Illinois EPA be excluded from the room  
23          from hearing other testimony.

24                         HEARING OFFICER SUDMAN:  I don't know.

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1           I mean, do you object to that?

2                         MR. COHEN:  I know that's normal  
3          courtroom procedure.  I don't know what the  
4          Board does.

5                         HEARING OFFICER SUDMAN:  I mean, we  
6          normally don't do that, but I don't have a

7           problem with it. I mean, you just have  
8           one -- do you have any witnesses here who are  
9           not --

10                   MR. COHEN: Yes. We were planning to  
11           call Mr. Garretson first and that would leave  
12           Mr. Kallis in the room.

13                   HEARING OFFICER SUDMAN: But  
14           Mr. Kallis is not testifying; is that  
15           correct?

16                   MR. COHEN: He's going to testify  
17           next.

18                   HEARING OFFICER SUDMAN: Oh, he is  
19           going to testify next.

20                   MR. COHEN: Right.

21                   HEARING OFFICER SUDMAN: Okay. All  
22           right.

23                   MR. COHEN: So you would ask  
24           Mr. Kallis to be excused?

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1                   HEARING OFFICER SUDMAN: Yes, please.

2                   I would also like to note for the  
3           record that Mr. Joel Sternstein is here from  
4           the Attorney General's office. The People  
5           did request that Mr. Sternstein be allowed to

6 sit in. I granted that request under the  
7 condition that Mr. Sternstein did not  
8 communicate with anybody involved in the  
9 hearing.

10 If there is anyone here not  
11 involved with the hearing, you may  
12 communicate with them. You may also  
13 communicate with me if you need to, Joel. So  
14 with that warning aside, you may observe.

15 The People may present their case.

16 MR. COHEN: Thank you, Madam Hearing  
17 Officer. Our first witness will be Mike  
18 Garretson.

19 HEARING OFFICER SUDMAN: Would you  
20 please swear him in?

21 THE REPORTER: Sure.

22 (Witness sworn.)

23

24

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1 WHEREUPON:

2 MICHAEL GARRETSON

3 called as a witness herein, having been first duly

4 sworn, deposeth and saith as follows:

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D I R E C T E X A M I N A T I O N

BY MR. COHEN:

Q. Would you please state your name and spell your last name for the record?

A. Michael Garretson, G-A-R-R-E-T-S-O-N.

Q. Mr. Garretson, where do you work?

A. I work for the Illinois Environmental Protection Agency.

Q. And do you work and live in Springfield?

A. Yes, I do.

Q. How long have you worked for the Illinois Environmental Protection Agency?

A. For 24 years.

Q. Where did you work for the agency when you started working there 24 years ago?

A. I started in the water pollution control division in the operator certification unit.

Q. And have you held other positions over your 24 years there?

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A. In 1987, I became the manager of the compliance operations unit and then in January of 2003, I became the acting manager of the compliance

4 assurance section.

5 Q. What is the compliance operations  
6 unit?

7 A. The compliance operations unit  
8 provides support for the compliance assurance  
9 section. It is a unit of the section codes, NPDES  
10 permits, and processes DMR forms, discharge  
11 monitoring report forms, received by the agency.

12 Q. You also mentioned NPDES permits.  
13 What does NPDES stand for?

14 A. National Pollutant Discharge  
15 Elimination System.

16 Q. What responsibilities does the  
17 compliance assurance section have?

18 A. To monitor compliance of water and  
19 waste water treatment facilities with NPDES permits,  
20 to process DMR forms and to take compliance actions  
21 as necessary.

22 Q. Now, you mentioned waste water, would  
23 you also have storm water responsibilities?

24 A. Yes.

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1 Q. And what does your unit actually do  
2 with NPDES permits? And let me direct your

3 attention more toward the late 1980s, early 1990s  
4 rather than today.

5 A. Well, what we do is monitor the  
6 compliance of waste water facilities with the NPDES  
7 permits, compare discharge monitoring reports with  
8 limits contained in those permits.

9 Q. You keep saying waste water, but do  
10 you also mean storm water?

11 A. Yes.

12 Q. And is one of the ways that you do  
13 that monitoring with discharge monitoring reports or  
14 DMRs?

15 A. Yes.

16 Q. And what do you do with those?

17 A. Discharge monitoring reports are  
18 received, they are logged in and distributed, and  
19 compared with NPDES permit limits.

20 Q. Are you familiar with the Skokie  
21 Valley Asphalt Company?

22 A. Yes. I'm familiar that they had an  
23 NPDES permit.

24 Q. And is that basically how you're

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1 familiar with that company?

2 A. Yes.

3 Q. You have never gone out the Grayslake  
4 and seen the facility or anything like that?

5 A. No, I haven't.

6 MR. COHEN: Madam Hearing Officer, may  
7 I approach?

8 HEARING OFFICER SUDMAN: Yes.

9 BY MR. COHEN:

10 Q. Mr. Garretson, I'm handing you a white  
11 binder entitled Complainant's Exhibits. I also have  
12 one here for the hearing officer --

13 HEARING OFFICER SUDMAN: Oh, thank  
14 you.

15 Q. -- and one has been given to  
16 respondents' counsel.

17 Directing your attention to  
18 Complainant's Exhibit No. 1, do you recognize that  
19 exhibit?

20 MR. JAWGIEL: I'm going to object to  
21 the foundation.

22 HEARING OFFICER SUDMAN: Would you  
23 like to lay some foundation for this?

24 MR. COHEN: That's exactly what I'm

1           trying to do.

2                       HEARING OFFICER SUDMAN:   Okay.

3                       THE WITNESS:   Yes.   It's the NPDES  
4           permit issued to Skokie Valley Asphalt  
5           Company.

6   BY MR. COHEN:

7           Q.       And when was that permit issued to  
8           them?

9                       MR. JAWGIEL:   Your Honor, I'm going to  
10           object.   This goes beyond the scope of his  
11           213 interrogatories.

12                      HEARING OFFICER SUDMAN:   Overruled.

13                      THE WITNESS:   It was issued on  
14           April 4, 1986.

15   BY MR. COHEN:

16           Q.       And when did this become effective?

17           A.       May 4, 1986.

18           Q.       And when did this permit expire?

19           A.       March 1, 1991.

20           Q.       Is that a true and correct copy of the  
21           permit?

22           A.       Yes, it is.

23           Q.       And is that permit kept in the  
24           ordinary course of Illinois EPA business?

1 A. Yes, it is.

2 Q. What is the permit number issued to  
3 the Skokie Valley Asphalt Company?

4 A. IL-0065005.

5 Q. Did the NPDES permit issued to Skokie  
6 Valley Asphalt Company require them to submit DMRs?

7 MR. JAWGIEL: Your Honor, objection,  
8 legal conclusion.

9 HEARING OFFICER SUDMAN: The question  
10 or the answer?

11 MR. JAWGIEL: The question asks for a  
12 legal conclusion whether or not the permit  
13 requires -- the requirements of the permit  
14 speak for themselves.

15 HEARING OFFICER SUDMAN: Overruled.  
16 I'll allow it.

17 MR. JAWGIEL: I'll object also to  
18 foundation. He hasn't established that this  
19 individual knows the requirements of an NPDES  
20 permit at the time of issuance.

21 HEARING OFFICER SUDMAN: Okay. Well,  
22 he's not finished.

23 THE WITNESS: Yes. The NPDES permit  
24 requires the permittee to submit monthly

1 discharge monitoring report forms.

2 BY MR. COHEN:

3 Q. And when would Skokie Valley Asphalt  
4 Company be required to start submitting their  
5 discharge monitoring reports?

6 MR. JAWGIEL: Same objection, your  
7 Honor. We haven't established a foundation  
8 that this individual is knowledgeable with  
9 respect to this permit at the time. That  
10 foundation has not been laid.

11 HEARING OFFICER SUDMAN: Would you  
12 like to make a continuing objection? I mean,  
13 it sounds like he's moving in that direction.

14 MR. JAWGIEL: Yes. That's fine, your  
15 Honor. I'll have a continuing objection. I  
16 assume that my objections are overruled?

17 HEARING OFFICER SUDMAN: Yes.

18 Please continue and please do  
19 establish a foundation.

20 THE WITNESS: Could you please repeat  
21 the question?

22 BY MR. COHEN:

23 Q. Let me go back to your work again with  
24 the compliance assurance section. Back in the late

1 '80s, what did your division do when you received  
2 NPDES permits?

3 A. As NPDES permits were issued, the  
4 requirements contained in those permits were entered  
5 into a computer system for tracking.

6 Q. So would your unit be responsible for  
7 reviewing those permits and learning and  
8 understanding what the requirements of the permits  
9 were?

10 MR. JAWGIEL: Objection, your Honor,  
11 leading.

12 HEARING OFFICER SUDMAN: Well, you are  
13 leading a little bit. Could you just --

14 MR. COHEN: He keeps asking me to lay  
15 the foundation.

16 HEARING OFFICER SUDMAN: Yeah. I  
17 mean, this is pretty introductory stuff.

18 MR. JAWGIEL: It's introductory, but  
19 he can simply ask what was the responsibility  
20 of your department. He doesn't have to lay  
21 it out for him step by step. This individual  
22 who allegedly is a knowledgeable person of  
23 the procedures can tell us in his detail --  
24 in his own words, what this department does.

1 HEARING OFFICER SUDMAN: Well, I think  
2 he's just trying to speed things along a  
3 little bit because you want foundation and  
4 the witness doesn't know what information  
5 you're looking for and I think Mr. Cohen can  
6 help him reach that a little faster.

7 MR. JAWGIEL: He's not allowed to lead  
8 in order to shrunKate this proceeding for his  
9 benefit. If this individual doesn't give the  
10 testimony he wants, that's the State's  
11 problem.

12 HEARING OFFICER SUDMAN: Mr. Jawgiel,  
13 I will not allow him to lead the witness.  
14 However, I consider this testimony on laying  
15 the foundation to be fairly preliminary.

16 MR. JAWGIEL: Thank you, your Honor.

17 HEARING OFFICER SUDMAN: So your  
18 objection is overruled.

19 Please continue.

20 BY MR. COHEN:

21 Q. Do you remember the question?

22 A. No. I'm sorry.

23 Q. Is part of the function of your unit  
24 to review the requirements of the NPDES permits so

1 that you would know what those requirements were?

2 MR. JAWGIEL: Same objection.

3 HEARING OFFICER SUDMAN: Would you  
4 like to make a standing objection,  
5 Mr. Jawgiel?

6 MR. JAWGIEL: Please. Thank you,  
7 your Honor.

8 THE WITNESS: The NPDES permits, like  
9 I said, are reviewed and coded into a  
10 computer system for compliance tracking.

11 BY MR. COHEN:

12 Q. And did you do that -- did your unit  
13 do that with the Skokie Valley Asphalt Company?

14 A. Yes, we did.

15 Q. When was Skokie Valley Asphalt  
16 supposed to start submitting their DMR reports?

17 MR. JAWGIEL: Same objection,  
18 foundation.

19 HEARING OFFICER SUDMAN: You have a  
20 standing objection to this entire line of  
21 questioning, okay?

22 MR. JAWGIEL: Thank you, your Honor.

23 Please continue.

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1 June 15, 1986.

2 BY MR. COHEN:

3 Q. And why do you say June 15, 1986?

4 A. Because the NPDES permit requires the  
5 permittee to submit the discharge monitoring report  
6 form no later than the 15th of the following month.

7 Q. The 15th of the following month?

8 A. For each month, yes.

9 Q. Is that the 15th of the following  
10 month after the permit is issued?

11 A. After the permit becomes effective.

12 Q. And does that DMR responsibility begin  
13 even if the company is not discharging?

14 A. Yes. The NPDES permit states that.

15 Q. Can you explain the process that the  
16 Illinois EPA uses when DMRs are received at the  
17 division of water pollution control compliance  
18 assurance section and, again, I'm referring to back  
19 in the late '80's or early '90s?

20 A. Yes. At that time, DMRs were received  
21 in the mail. They were opened -- the mail was  
22 opened by one particular individual, then the DMRs

23 were date stamped and then provided to another  
24 individual for logging in our DMR submission records

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1 and then they were copied and distributed to our  
2 regional offices and our records unit.

3 Q. Is that generally the same procedure  
4 that was used for Skokie Valley Asphalt Company's  
5 DMR?

6 MR. JAWGIEL: Your Honor, I'm going to  
7 object. There's no foundation with respect  
8 to this individual's personal knowledge of  
9 what happened to the DMRs submitted by Skokie  
10 Valley.

11 HEARING OFFICER SUDMAN: Overruled.

12 THE WITNESS: Yes.

13 BY MR. COHEN:

14 Q. Directing your attention to  
15 Complaint's Exhibit No. 2, do you recognize that?

16 MR. JAWGIEL: I'm going to object to  
17 the foundation, your Honor. That is not a  
18 proper form of a question to establish an  
19 exhibit.

20 HEARING OFFICER SUDMAN: I'll allow  
21 it. Just allow him a couple of questions to

22 establish a foundation, you know, first.

23 So please go ahead.

24 THE WITNESS: Yes. This is the

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1 November 1990 discharge monitoring report  
2 form submitted by Skokie Valley Asphalt  
3 Company, Incorporated.

4 BY MR. COHEN:

5 Q. When was it received by the Illinois  
6 EPA?

7 A. On December 18, 1990.

8 Q. How can you tell that it was received  
9 by the Illinois EPA on that date?

10 A. By the compliance assurance section  
11 date stamp on the document.

12 Q. Are all DMRs stamped received by your  
13 unit?

14 MR. JAWGIEL: I'm going to object,  
15 your Honor, with respect to foundation. He  
16 can talk about procedure but he can't talk --  
17 unless he establishes a foundation that this  
18 individual processed every single DMR,  
19 whether or not every single DMR has been  
20 stamped.

21 HEARING OFFICER SUDMAN: You can make  
22 a standing objection as to the foundation of  
23 this document, but I'm going to overrule your  
24 objection for now.

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1 Please continue.

2 THE WITNESS: DMRs are generally date  
3 stamped. There have been times when not all  
4 of them have been stamped.

5 BY MR. COHEN:

6 Q. Do you know why sometimes not all DMRs  
7 were date stamped?

8 A. Well, I do know back at the time that  
9 we're talking about that we received a lot of  
10 discharge monitoring report forms. We had the  
11 practice of date stamping every individual page of  
12 the DMR. We made a procedural change so that just  
13 the top page of the documents would be date stamped.

14 But in some cases when multiple  
15 submissions of DMRs could come in together, it  
16 resulted in errors because the top copy got stamped  
17 and not all of the DMRs.

18 Q. Do you know of any other reasons DMRs  
19 might not have been date stamped?

20 A. It could be human error.  
21 Q. Who certified and signed that DMR?  
22 MR. JAWGIEL: I'm going to object to  
23 the foundation, your Honor.  
24 HEARING OFFICER SUDMAN: Overruled.

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1 THE WITNESS: Richard J. Frederick,  
2 vice president of Skokie Valley Asphalt  
3 Company, Incorporated.  
4 BY MR. COHEN:  
5 Q. Directing your attention to  
6 Complaint's Exhibit No. 3, do you recognize that  
7 exhibit?  
8 A. That's the December 1990 discharge  
9 monitoring report form for Skokie Valley Asphalt  
10 Company.  
11 Q. And when was that DMR received by the  
12 Illinois EPA?  
13 A. April 25, 1991.  
14 Q. By the way, when was that DMR due to  
15 the Illinois EPA?  
16 A. January 15, 1991.  
17 Q. Who signed and certified that DMR?  
18 A. Richard J. Frederick, vice president

19 of Skokie Valley Asphalt Company.

20 Q. Other than the dates, is the data  
21 contained in Skokie Valley Asphalt's November 1990  
22 DMR, which was Complainant's Exhibit No. 2,  
23 identical to the data contained in its  
24 December 1990 DMR, Complainant's Exhibit

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1 No. 3?

2 MR. JAWGIEL: Your Honor, I'm going to  
3 object. The document speaks for itself.

4 HEARING OFFICER SUDMAN: Overruled.

5 You can answer.

6 THE WITNESS: Yes, it's identical.

7 BY MR. COHEN:

8 Q. But for the dates on those two  
9 documents, do the copies appear to be identical?

10 MR. JAWGIEL: I'm going to object,  
11 your Honor, with respect to foundation.  
12 This individual has not been qualified as an  
13 expert in determining the photocopying  
14 qualities of two different documents.

15 HEARING OFFICER SUDMAN: That's true,  
16 but the Board is able to weigh his testimony  
17 and see for themselves, so I'll allow him to

18 answer to the extent that he's able with his  
19 credentials.

20 THE WITNESS: The documents look  
21 identical.

22 BY MR. COHEN:

23 Q. Directing your attention to  
24 Complainant's Exhibit No. 4, do you recognize that?

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1 A. It's the discharge monitoring report  
2 form submitted for January 1991 by Skokie Valley  
3 Asphalt Company.

4 Q. When was that discharge monitoring  
5 report due to the Illinois EPA?

6 A. February 15, 1991.

7 Q. And when was that document received by  
8 the Illinois EPA?

9 A. April 25, 1991.

10 Q. Who signed and certified that  
11 document?

12 A. Richard J. Frederick, vice president  
13 of Skokie Valley Asphalt Company.

14 Q. Directing your attention to  
15 Complainant's Exhibit No. 5, do you recognize that  
16 document?

17           A.       It is the February 1991 discharge  
18 monitoring report form for Skokie Valley Asphalt  
19 Company.

20           Q.       When was that received by the Illinois  
21 EPA?

22           A.       February 28, 1991.

23           Q.       Who signed and certified that  
24 document?

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1           A.       Richard J. Frederick, vice president  
2 of Skokie Valley Asphalt Company.

3           Q.       Other than the dates on Complainant's  
4 Exhibits 4 and 5, Skokie Valley Asphalt DMRs for  
5 January 1991 and February 1991, is the data  
6 contained in both DMRs identical?

7           A.       Yes, it is.

8           Q.       But for the dates, do the copies  
9 appear to be identical?

10                   MR. JAWGIEL:   Objection, your Honor,  
11 foundation. This witness has not been  
12 qualified as an expert to determine whether  
13 or not the copies of two different documents  
14 are identical.

15                   HEARING OFFICER SUDMAN:   I'm

16           overruling that for the same reason as  
17           before.

18                         THE WITNESS:  Yes, it's identical.

19  BY MR. COHEN:

20           Q.        Is it unusual to get DMRs from the  
21  same company with identical scientific data two  
22  months in a row?

23                         MR. JAWGIEL:  Your Honor, objection.

24           He hasn't laid the foundation with respect to

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1           the frequency of that occurrence, his  
2           experience with that, his review of the DMRs  
3           during this period of time, et cetera.  He  
4           has not laid the proper foundation for that  
5           opinion.

6                         HEARING OFFICER SUDMAN:  Overruled.

7                         THE WITNESS:  Yes, it is unusual.

8  BY MR. COHEN:

9           Q.        Why do you say it's unusual?

10          A.        Because there are many variables in  
11  the -- weather could have an effect.  Sampling  
12  procedures and testing procedures could all be  
13  variables and result in different values reported on  
14  discharge monitoring report forms.

15 Q. Referring back to Skokie Valley  
16 Asphalt's NPDES permit, IL-0065005, Complainant's  
17 Exhibit No. 1, when did Skokie Valley Asphalt's  
18 permit expire?

19 A. March 1, 1991.

20 Q. According to their permit, when did  
21 Skokie Valley Asphalt have to reapply for their  
22 permit if they wanted to continue to discharge  
23 waters of the State after March 1, 1991?

24 A. Well, 180 days prior to the expiration

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1 date.

2 Q. Did Skokie Valley Asphalt reapply for  
3 their NPDES permit 180 days before March 1, 1991?

4 A. No, they didn't.

5 Q. Directing your attention to  
6 Complainant's Exhibit No. 6, do you recognize that  
7 document?

8 A. It's a permit renewal application  
9 submitted for Skokie Valley Asphalt Company, permit  
10 number IL-0065005.

11 Q. When was that permit renewal  
12 application received by the Illinois EPA?

13 A. June 5, 1991.

14 Q. And who submitted that application?

15 A. Edwin L. Frederick, Jr., president of  
16 Skokie Valley Asphalt Company.

17 Q. Did he also sign that application?

18 A. Yes, he did.

19 Q. Now, was that permit renewal  
20 application received by the compliance assurance  
21 section?

22 A. Yes, it was.

23 Q. Why did Skokie Valley Asphalt send the  
24 compliance assurance section its permit renewal

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1 application?

2 MR. JAWGIEL: Your Honor, I'm going  
3 to object. That asks for speculation on the  
4 state of mind and reasoning behind this from  
5 another entity. He's asking this individual  
6 why Skokie Valley did something and I don't  
7 think this individual can speak for Skokie  
8 Valley.

9 HEARING OFFICER SUDMAN: What was your  
10 question?

11 MR. COHEN: My question was why did  
12 Skokie Valley Asphalt Company send the permit

13 renewal application to the compliance  
14 assurance section.

15 HEARING OFFICER SUDMAN: I'll allow  
16 it -- as opposed to sending it anywhere else?

17 MR. COHEN: Correct.

18 HEARING OFFICER SUDMAN: I'll allow  
19 that.

20 THE WITNESS: It was requested of  
21 Skokie Valley to send it to the compliance  
22 assurance section and a compliance inquiry  
23 letter to them in April of 1991.

24 MR. JAWGIEL: Your Honor, is he

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1 looking at that letter as we speak?

2 HEARING OFFICER SUDMAN: He appears to  
3 be.

4 MR. JAWGIEL: Are you looking at the  
5 letter, sir?

6 HEARING OFFICER SUDMAN: Exhibit 6?

7 MR. JAWGIEL: Exhibit 6 is not the  
8 letter.

9 HEARING OFFICER SUDMAN: Oh.

10 MR. JAWGIEL: Exhibit 6 is the renewal  
11 application form.

12 HEARING OFFICER SUDMAN: Isn't that  
13 what you were talking about?

14 MR. COHEN: Correct.

15 MR. JAWGIEL: But this witness said --  
16 I want to know what exhibit is in front of  
17 him because he has a whole stack of exhibits.  
18 My concern is he's reviewing an exhibit that  
19 hasn't been admitted at this point in time.

20 HEARING OFFICER SUDMAN: What exhibit  
21 are you reviewing, sir?

22 THE WITNESS: The permit renewal  
23 application form.

24 HEARING OFFICER SUDMAN: Okay. And

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1 that's what you were talking about?

2 THE WITNESS: No.

3 HEARING OFFICER SUDMAN: No, that's  
4 not what you were talking about?

5 THE WITNESS: No.

6 HEARING OFFICER SUDMAN: What were you  
7 talking about?

8 THE WITNESS: About a compliance  
9 inquiry letter that --

10 HEARING OFFICER SUDMAN: Okay. So

11           that was not the subject of this question; is  
12           that correct? Can we back up a little bit  
13           and just start again?

14                         MR. COHEN: Yes.

15 BY MR. COHEN:

16           Q.         Mr. Garretson, is it unusual for a  
17           company to send a permit renewal application to the  
18           compliance assurance section instead of the permit  
19           section?

20                         MR. JAWGIEL: Objection, your Honor.

21           That goes beyond his 213 disclosures.

22                         HEARING OFFICER SUDMAN: Overruled.

23                         THE WITNESS: It's not unusual when  
24           it's requested in a compliance inquiry

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1           letter.

2 BY MR. COHEN:

3           Q.         Why did Skokie Valley Asphalt Company  
4           send the compliance assurance section its permit  
5           renewal application?

6                         MR. JAWGIEL: Same objection, your  
7           Honor, with respect --

8                         HEARING OFFICER SUDMAN: Would you  
9           like to make a standing objection to that?

10 MR. JAWGIEL: Please. Thank you.

11 HEARING OFFICER SUDMAN: Please

12 continue.

13 THE WITNESS: Because it was requested  
14 in a compliance inquiry letter to Skokie  
15 Valley.

16 BY MR. COHEN:

17 Q. You're not looking at this letter, are  
18 you?

19 A. No, I'm not.

20 Q. Do you know why such a letter was sent  
21 to Skokie Valley Asphalt Company?

22 A. Because the permit had expired and the  
23 permit application had not been received.

24 Q. And that would be something that would

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1 be the responsibility of your unit?

2 A. That's correct.

3 Q. If the permit section needs additional  
4 information related to a permit renewal application,  
5 would the compliance assurance section have any  
6 responsibility for that?

7 A. No.

8 Q. Directing your attention to

9 Complainant's Exhibit No. 7, it appears to be a  
10 submittal of additional information. As I  
11 understand it, your unit would not be involved with  
12 this?

13 A. That's correct.

14 Q. Earlier you mentioned that DMRs are  
15 logged in at the division of water pollution control  
16 compliance assurance section and I'm talking about  
17 late '80s, early '90s. Can you describe the  
18 procedure in a little more detail?

19 A. As DMRs are received in the compliance  
20 assurance section, the mail is opened, the DMRs are  
21 date stamped, then they are given to an individual  
22 who makes a record of the DMR submissions in what we  
23 call discharge -- DMR submission records.

24 Q. What is a DMR submission record?

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1 A. It's a logbook of a list of NPDES  
2 permit numbers where the dates of DMR submissions  
3 are recorded.

4 Q. Now, is this the procedure that's  
5 still at the agency?

6 A. No. We started doing an electronic  
7 log in, I believe, it was 1987.

8 Q. And I know we're talking about --

9 A. I apologize. That's 1997.

10 Q. Okay. I know we're talking  
11 15 years ago, but does the Illinois EPA still have  
12 some of those logbooks from back then?

13 A. Yes, we do.

14 Q. Directing your attention to  
15 Complainant's Exhibit No. 8, do you recognize that  
16 exhibit?

17 A. Yes. These are the sheets out of the  
18 DMR submission records which contain the Skokie  
19 Valley NPDES permit number, yes.

20 Q. And did those sheets come from the  
21 logbooks that you were able to find?

22 A. Yes, they do.

23 Q. And did you photocopy those pages from  
24 logbooks?

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1 A. Yes, I did.

2 Q. What years of the logbooks were you  
3 able to find and are included in that exhibit?

4 A. I found 1986, 1987, 1988, 1989, 1990,  
5 1991, 1992, 1993, and 1996.

6 Q. Excuse me. I asked about the exhibit.

7 Is 1986 included in your copy of the exhibit?

8 A. No, it's not.

9 Q. And for the record, these pages in  
10 Complainant's Exhibit No. 8 are also lettered.

11 Could you go through the years and  
12 say what the letter of each page is, please?

13 A. Okay. 1987 is 8A; 1988 is 8B; 1989 is  
14 8C; 1990 is 8D; 1991 is 8E; 1992 is 8F; 1993 is 8G;  
15 and 1996 is 8H.

16 Q. Thank you.

17 You mentioned earlier that Skokie  
18 Valley Asphalt's NPDES permit became effective in  
19 May of 1986, correct?

20 A. Yes.

21 Q. Do you have any records of which DMRs  
22 Skokie Valley Asphalt submitted in 1986?

23 A. There's no record of submissions of  
24 DMRs in 1986.

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1 Q. Which DMRs did Skokie Valley Asphalt  
2 submit in 1987?

3 A. There's no DMR submission records for  
4 the -- submissions by Skokie Valley in 1987.

5 Q. Can you describe for the Board how you

6 are using Complainant's Exhibit 8A in your answer to  
7 that question?

8 A. Okay. I'm finding the entry for  
9 Skokie Valley Asphalt Company. There are places on  
10 the sheet labeled 01 through 12 where they represent  
11 months and in those places we log the date that the  
12 DMR was received for that month in the DMR  
13 submission record.

14 Q. And at least on Complainant's  
15 Exhibit 8A, the Skokie Valley Asphalt name is  
16 approximately halfway down the page, would that be  
17 correct?

18 A. That's correct.

19 Q. And there's also a number to the left  
20 of Skokie Valley Asphalt. What does that number  
21 represent?

22 A. That number represents the NPDES  
23 permit number for Skokie Valley.

24 Q. Did Skokie Valley Asphalt submit any

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1 DMRs in 1988?

2 MR. JAWGIEL: I'm just going to  
3 object. Is it according to this record that  
4 he's basing his opinion on I assume? Form of

5 the question is my objection.

6 HEARING OFFICER SUDMAN: What's your  
7 objection?

8 MR. JAWGIEL: My objection is form of  
9 the question.

10 HEARING OFFICER SUDMAN: Would you  
11 like to rephrase the question, Mr. Cohen?

12 MR. JAWGIEL: I assume it's based on  
13 these reports.

14 HEARING OFFICER SUDMAN: I would  
15 assume as well, but would you like to  
16 clarify?

17 BY MR. COHEN:

18 Q. Referring to Complainant's  
19 Exhibit No. 8B, did the Illinois EPA have any record  
20 of Skokie Valley Asphalt submitting any DMRs in  
21 1988?

22 A. The records show that they submitted  
23 the November and December DMRs in 1988.

24 Q. Just those two?

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1 A. Yes.

2 Q. According to Complainant's Exhibit 8C,  
3 in 1989 did Skokie Valley Asphalt fail to submit any

4 of their monthly DMRs?

5 MR. JAWGIEL: Your Honor, I'm going  
6 to object. This is not germane to the issues  
7 that are in the complaint. This is not one  
8 of the issues that was brought before you  
9 here today.

10 HEARING OFFICER SUDMAN: Would you  
11 care to respond to that, Mr. Cohen?

12 MR. COHEN: I believe Count III.

13 HEARING OFFICER SUDMAN: I'm going to  
14 overrule that objection.

15 THE WITNESS: The record shows that  
16 DMRs were not received for April, June,  
17 August, September, October, November or  
18 December of 1989.

19 BY MR. COHEN:

20 Q. According to the Complainant's  
21 Exhibit 8D, in 1999 did Skokie Valley Asphalt fail  
22 to submit any of their monthly DMRs?

23 A. There's no record for a September 1990  
24 DMR for Skokie Valley.

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1 Q. And according to Complainant's  
2 Exhibit 8F, in 1992 did Skokie Valley Asphalt fail

3 to submit any of their monthly DMRs?

4 A. There's no record of receiving the  
5 July 1992 DMR from Skokie Valley Asphalt.

6 Q. Referring back to Complainant's  
7 Exhibit No. 1, Skokie Valley Asphalt's NPDES permit,  
8 are there concentration limits listed in the permit  
9 for total suspended solids?

10 MR. JAWGIEL: Your Honor, I'm going  
11 to object. That goes beyond the scope of his  
12 213 disclosures.

13 HEARING OFFICER SUDMAN: Overruled.

14 THE WITNESS: Could you repeat?

15 BY MR. COHEN:

16 Q. According to their NPDES permit, are  
17 there concentration limits listed in the permit for  
18 total suspended solids?

19 A. Yes, there are.

20 Q. What are the concentration limits?

21 A. It's 15 milligrams per liter as a  
22 30-day average and 30 milligrams per liter as a  
23 daily maximum.

24 Q. Directing your attention to

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1 Complainant's Exhibit No. 9, do you recognize that

2 document?

3 A. It's the August 1991 DMR for Skokie  
4 Valley Asphalt Company.

5 Q. And who is that signed and certified  
6 by?

7 A. Richard J. Frederick, vice president  
8 of Skokie Valley Asphalt Company.

9 Q. And what does Skokie Valley Asphalt  
10 Company report as their 30-day average concentration  
11 for total suspended solids?

12 A. Fifty-five milligrams per liter.

13 Q. And what does Skokie Valley Asphalt  
14 Company report as their daily maximum concentration  
15 for total suspended solids?

16 A. Fifty-five milligrams per liter.

17 Q. Directing your attention to  
18 Complainant's Exhibit No. 10, do you recognize that  
19 document?

20 A. It's the September 1991 discharge  
21 monitoring report form for Skokie Valley Asphalt  
22 Company.

23 Q. Who signed and certified that  
24 document?

1           A.       Richard J. Frederick, vice president  
2 of Skokie Valley Asphalt.

3           Q.       What does Skokie Valley Asphalt  
4 Company report as their 30-day average concentration  
5 for total suspended solids?

6           A.       Twenty-five milligrams per liter.

7           Q.       Directing your attention to  
8 Complainant's Exhibit No. 11, do you recognize that  
9 document?

10          A.       It's the October 1991 discharge  
11 monitoring report form for Skokie Valley Asphalt  
12 Company.

13          Q.       What does Skokie Valley Asphalt  
14 Company report as their 30-day average for total  
15 suspended solids?

16          A.       Forty-one milligrams per liter.

17          Q.       What does Skokie Valley Asphalt  
18 Company report as their daily maximum for total  
19 suspended solids?

20          A.       Forty-one milligrams per liter.

21          Q.       Complainant's Exhibit No. 12, do you  
22 recognize that?

23          A.       It's the February 1992 discharge  
24 monitoring report form for Skokie Valley Asphalt

1 Company.

2 Q. What does Skokie Valley Asphalt  
3 Company report as their 30-day average for total  
4 suspended solids?

5 A. Eighteen milligrams per liter.

6 Q. Complainant's Exhibit No. 13, do you  
7 recognize that?

8 A. It's the November 1992 discharge  
9 monitoring report form for Skokie Valley Asphalt  
10 Company.

11 Q. What does Skokie Valley Asphalt report  
12 as their 30-day average concentration for total  
13 suspended solids?

14 A. Twenty-two milligrams two per liter.

15 Q. Complainant's Exhibit No. 14, do you  
16 recognize that?

17 A. It's the December 1992 discharge  
18 monitoring report form for Skokie Valley Asphalt  
19 Company.

20 Q. What does Skokie Valley Asphalt  
21 Company report as their 30-day average for total  
22 suspended solids?

23 A. Twenty-four milligrams per liter.

24 Q. Complainant's Exhibit No. 15, what is

1 that?

2 A. It's the May 1993 discharge monitoring  
3 report form for Skokie Valley Asphalt Company.

4 Q. What does Skokie Valley Asphalt report  
5 as their 30-day average for total suspended solids?

6 A. Twenty-four milligrams per liter.

7 Q. Complainant's Exhibit No. 16, what is  
8 that?

9 A. This is a discharge monitoring report  
10 form for June 1993.

11 Q. What does Skokie Valley report as  
12 their 30-day average for total suspended solids?

13 A. Thirty-five milligrams per liter.

14 Q. And what does Skokie Valley Asphalt  
15 Company report as their daily maximum concentration  
16 for total suspended solids?

17 A. Thirty-five milligrams per liter.

18 Q. Complainant's Exhibit No. 17, what is  
19 that?

20 A. It's the April 1995 discharge  
21 monitoring report form for Skokie Valley Asphalt  
22 Company.

23 Q. What does Skokie Valley Asphalt report  
24 as their 30-day average concentration for total

1 suspended solids?

2 A. 126 milligrams per liter.

3 Q. And what does Skokie Valley Asphalt  
4 report as their daily maximum concentration for  
5 total suspended solids?

6 A. 126 milligrams per liter.

7 Q. Mr. Garretson, are all the  
8 concentrations Skokie Valley Asphalt reported for  
9 total suspended solid concentrations in  
10 Complainant's Exhibit Nos. 9 through 17 that I just  
11 asked you to read in excess of the concentrations  
12 allowed in Skokie Valley Asphalt's NPDES permit?

13 MR. JAWGIEL: Your Honor, I'm going to  
14 object as far as a legal conclusion.

15 HEARING OFFICER SUDMAN: I'll allow  
16 him to answer to the extent that he's able.

17 THE WITNESS: Yes, they are  
18 violations.

19 BY MR. COHEN:

20 Q. And with regard to Complainant's  
21 Exhibit Nos. 1 through 6 and 8 through 17, are all  
22 those records kept in the ordinary course of  
23 Illinois EPA business?

24 A. Yes, they are.

1 Q. And are all those exhibits true and  
2 correct copies of the Illinois EPA records?

3 A. Yes, they are.

4 MR. COHEN: May I have one moment?

5 HEARING OFFICER SUDMAN: Okay.

6 MR. COHEN: Just for clarity, I just  
7 want to straighten out -- I think I misspoke  
8 in my last couple of questions.

9 HEARING OFFICER SUDMAN: Okay.

10 BY MR. COHEN:

11 Q. Mr. Garretson, with regard to  
12 Complainant's Exhibits 1 through 6 and 8 through 17,  
13 are those records kept in the ordinary course of  
14 Illinois EPA business?

15 A. 1 through 6 and -- I'm sorry?

16 Q. 8 through 17.

17 A. Yes, they are.

18 Q. And are those true and correct copies  
19 of those records?

20 A. Yes, they are.

21 MR. JAWGIEL: Your Honor, if I may,  
22 with respect to Count III, according to the  
23 State, they say that this information is  
24 relevant. Count III does not address the

1 missing DMR. Count III addresses that levels  
2 were reported inaccurately. I can show you  
3 my copy to make it convenient for you, but  
4 the information is not relevant.

5 HEARING OFFICER SUDMAN: I was under  
6 the impression Count III did also include  
7 some missing reports but --

8 MR. JAWGIEL: Some, but not all of  
9 those dates that they were going through.

10 HEARING OFFICER SUDMAN: Would you  
11 like to respond to that Mr. Cohen?

12 MR. COHEN: Yes, there are missing  
13 reports and they are alleged in that count.

14 MR. JAWGIEL: That is not accurate.  
15 The missing reports are not alleged in that  
16 count. What's alleged in paragraph 21, and I  
17 think is particularly what I'm referring to,  
18 is that's the count which addresses the  
19 substance of that particular count and it has  
20 nothing to do with missing reports.

21 MR. COHEN: Paragraph 18 from the  
22 second amended complaint: Since November  
23 1988, respondents failed to submit DMRs, et

24           cetera.

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1                   HEARING OFFICER SUDMAN: Does it  
2 specify dates?

3                   MR. COHEN: Yes, it does.

4                   Judge, I did have one final  
5 question to clarify --

6                   HEARING OFFICER SUDMAN: Oh, yes.

7                   MR. JAWGIEL: Your Honor, if I can  
8 have a ruling on my objection with respect to  
9 that information once you have had an  
10 opportunity, I would appreciate it.

11                   HEARING OFFICER SUDMAN: And your  
12 objection was to the evidence pertaining to  
13 dates not enumerated in the complaint?

14                   MR. JAWGIEL: Correct.

15                   HEARING OFFICER SUDMAN: Well, is  
16 there anything else this evidence goes  
17 towards? Are you asserting that this  
18 evidence is relevant to other allegations?

19                   MR. COHEN: Well, I believe it's a  
20 pattern that we're going to see throughout  
21 this trial, yes. But as far as the  
22 particular dates go, we're certainly allowed

23 to conform the complaint to the evidence  
24 that's presented.

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1 HEARING OFFICER SUDMAN: Well, it  
2 says --

3 MR. JAWGIEL: Your Honor, if I may  
4 just respond very briefly --

5 HEARING OFFICER SUDMAN: Yes.

6 MR. JAWGIEL: -- a pattern has no  
7 relevance in this particular cause of action.  
8 It's not one of the elements necessarily that  
9 needs to be presented with respect to this  
10 particular issue, on the reporting issue.

11 HEARING OFFICER SUDMAN: Well,  
12 Count III, paragraph 18 says: Since November  
13 1988, respondents failed to submit DMRs to  
14 the Illinois EPA for the following months:  
15 November 1988, April '89, June '89, August  
16 '89, October '89, November '89, December '89,  
17 and July of '92.

18 MR. JAWGIEL: And counsel went into  
19 '86 and '87. He went into dates that were  
20 beyond this paragraph.

21 HEARING OFFICER SUDMAN: Well, but

22           then it also -- I mean, are those dates  
23           relevant to any other allegations in this  
24           complaint, Mr. Cohen?

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1           MR. COHEN: Yes. I think it's going  
2           to show a pattern of noncompliance by the  
3           respondents.

4           HEARING OFFICER SUDMAN: Towards which  
5           count or which allegation specifically?

6           MR. COHEN: Well, I think you'll see  
7           it come up in the water pollution count and  
8           we do allege failure to comply with reporting  
9           requirements. We are allowed to conform the  
10          complaint at any time to match the evidence,  
11          so I do believe that evidence is relevant and  
12          certainly admissible.

13          MR. JAWGIEL: Your Honor, the water  
14          pollution count has nothing to do with this  
15          particular reporting because they're talking  
16          about oily substances and they're talking  
17          apples and oranges. This is typical of this  
18          particular case; it's done by smoke in  
19          mirrors.

20          HEARING OFFICER SUDMAN: Well, here's

21           what I'm going to do since you don't point me  
22           to a particular allegation in the complaint:  
23           I'm going to certainly allow the evidence  
24           with respect to the dates specified in the

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1           complaint. The other evidence we'll do as an  
2           offer of proof.

3                         Now, what was your question on  
4           clarification?

5                         MR. COHEN: I'm going to leave it  
6           alone, your Honor.

7                         HEARING OFFICER SUDMAN: Okay.  
8           Mr. Jawgiel, your witness?

9                         MR. JAWGIEL: Thank you, your Honor.

10                        C R O S S - E X A M I N A T I O N

11 BY MR. JAWGIEL:

12           Q.        Good morning, sir.

13           A.        Good morning.

14           Q.        I apologize if I have you jump around  
15           from place to place, but I'm trying to cover certain  
16           areas that may have been covered.

17                         You talked a little about the  
18           logging procedures that were performed back in the  
19           late 1980s, early 1990s and I think you indicated it

20 was done by hand; is that correct?

21 A. That's correct.

22 Q. Were there any quality assurance  
23 procedures instituted by your department at that  
24 point in time to determine whether or not the people

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1 who were actually logging the information were doing  
2 so correctly?

3 A. I'm not aware of any formal quality  
4 assurance procedures.

5 Q. So as you sit here today, you don't  
6 know whether or not the logs that were presented in  
7 here as exhibits, I believe, 8A through 8H are true  
8 and accurate representations of the actual reports,  
9 the DMR reports, submitted by anybody listed on  
10 those pages; is that correct?

11 A. Would you repeat the question?

12 Q. Sure.

13 As you sit here today, you would  
14 have no opinion whether or not the information  
15 contained in State's Exhibits 8A through 8H are true  
16 and accurate with respect to the information  
17 contained therein?

18 A. I believe they are correct.

19 Q. Well, have you ever logged reports  
20 during that period of time of 1987 through 1996  
21 yourself, sir?

22 A. No.

23 Q. And you never checked to determine  
24 whether or not all the information contained on

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1 these forms are accurate by going back into the  
2 files of all the companies listed here and  
3 determining whether or not the information is  
4 accurate; is that correct?

5 A. That's correct.

6 Q. So as you sit here today, you really  
7 have no basis other than you think that your  
8 procedures were followed; is that correct?

9 A. Well, I know the log person was  
10 trained in the -- you know, how to do it.

11 Q. Well, you also admitted I think on the  
12 stand that there's human error as a factor?

13 A. That's true.

14 Q. And human error can mean that certain  
15 reports weren't reported; is that correct?

16 A. It's possible.

17 Q. In your 24 years in the compliance

18 department, have you ever been involved in a  
19 situation where a report was mislogged?

20 A. I don't recall of any specific --  
21 well, I take that back. It does happen.

22 Q. Okay. And you indicated you're in the  
23 compliance departments, but is it your department's  
24 responsibility to review the DMRs?

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1 A. Yes.

2 Q. And who in the department actually  
3 reviews the DMRs?

4 A. The compliance specialist in that  
5 department as well as the people in the field  
6 operations section.

7 Q. Okay. Who was the compliance  
8 specialist from the department during the years of  
9 1987 through 1996?

10 A. I believe that was Jan Hopper.

11 Q. And what duties did Ms. Hopper have  
12 with respect to reviewing the DMRs?

13 A. Well, she would look at the DMRs,  
14 compare it to the NPDES permit to determine if  
15 violations existed.

16 Q. Okay. And I take it if she didn't

17 receive a DMR report for a period of time that was  
18 listed on the permit that she was supposed to do  
19 something; is that correct?

20 A. Could you repeat the question?

21 Q. Sure. I'll rephrase it.

22 If she did not receive a DMR  
23 report from somebody who had an NPDES permit, she  
24 was supposed to report that to somebody; is that

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1 correct?

2 A. Not in all cases.

3 Q. Well, how about in most cases?

4 A. Well, if it appeared to be a pattern  
5 of nonsubmission, then compliance inquiry letters  
6 were preferred.

7 Q. Okay. Do you have any compliance  
8 inquiry letters that were sent to Skokie Valley with  
9 you here today?

10 A. I don't, no.

11 Q. Okay. So as we sit here today, you  
12 don't think that there was a pattern of  
13 noncompliance because you don't have any  
14 documentation that your department took any steps to  
15 move Skokie Valley to comply; is that correct?

16 MR. COHEN: Object to the form of the  
17 question.

18 HEARING OFFICER SUDMAN: I think it's  
19 okay. He can answer. It was kind of a  
20 compound question. Could you break that up a  
21 little bit?

22 MR. JAWGIEL: Sure.

23 BY MR. JAWGIEL:

24 Q. You reviewed the Skokie Valley file

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1 before coming here today, did you not?

2 A. Yes, I did.

3 Q. And you took out all the information  
4 out of the Skokie Valley file that you thought was  
5 pertinent to this case and gave it over to the  
6 State; is that correct?

7 A. No.

8 Q. Well, did you allow the State to  
9 review the file?

10 A. Yes.

11 Q. And did you in your review of the file  
12 make copies for the State yourself?

13 A. Yes, of the DMR submission records.

14 Q. Okay. Did the State ask you at any

15 point in time to give them the compliance letters --

16 A. No.

17 Q. -- that you had referred to?

18 A. No.

19 Q. With respect to the permit itself,  
20 sir, I believe it's Exhibit No. 1 -- if you need to  
21 refer to that, please take a look at it. We're not  
22 going to test your memory.

23 With respect to the permit itself,  
24 the permittee in this case is Skokie Valley; isn't

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1 that correct?

2 A. Skokie Valley Asphalt Company,  
3 Incorporated.

4 Q. So the permittee, Skokie Valley  
5 Asphalt Company, Incorporated, is the one who holds  
6 the permit, is that correct, in your opinion?

7 A. That's correct.

8 Q. Skokie Valley Asphalt Company, Inc. --  
9 if I just call them Skokie Valley, you know what  
10 we're talking about?

11 A. Yes.

12 Q. Okay. With respect to Skokie Valley,  
13 it's Skokie Valley who's responsible for reporting

14 the DMRs; is that correct?

15 A. That's correct.

16 Q. The permittee is not Edwin or  
17 Larry Frederick, is it?

18 A. The permittee is Skokie Valley Asphalt  
19 Company.

20 Q. Okay. So with respect to -- we'll  
21 call him Larry Frederick, he goes by Larry --  
22 Mr. Larry Frederick wouldn't have responsibilities  
23 individually for reporting the DMRs, would he?

24 A. Well, the DMRs do contain a

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1 certification that must be signed by an individual  
2 such as them as to the accuracy of the DMRs and the  
3 information contained in there.

4 Q. But it's not the responsibility of the  
5 individual under the permit who signs the DMR to  
6 submit the DMR, it's the permittee's responsibility;  
7 isn't that correct?

8 A. Whoever signs the DMR has to make sure  
9 that whatever is contained in the DMR is correct.

10 Q. Well, you're kind of putting the cart  
11 before the horse, sir. Before we even have somebody  
12 certifying the content of the DMR, there's a

13 requirement that a DMR be submitted under the  
14 permit; is that correct?

15 A. That's correct.

16 Q. And based on your 24 years of  
17 knowledge of the permit, the entity responsible for  
18 even submitting the DMR is Skokie Valley in this  
19 case; is that correct?

20 A. Yes, a representative of Skokie Valley  
21 has to do the submissions.

22 Q. Well, but the responsible entity is  
23 Skokie Valley to submit the DMRs whether it's signed  
24 by Larry Frederick or signed by Richard Frederick or

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1 signed by someone else who is in that position, it  
2 doesn't matter; is that correct?

3 A. Well, ultimately you would think an  
4 individual has to submit the discharge monitoring  
5 report form.

6 Q. Well, let me ask you this question  
7 since you're familiar with the permit: Where in the  
8 permit does it make any individual responsible who  
9 is not the named permittee for submitting the DMR?

10 A. Could you repeat the question?

11 Q. Sure.

12                               Where in the language of the  
13 permit that was issued to Skokie Valley is there any  
14 language which makes an individual responsible who  
15 is not the permittee, the named permittee, for  
16 filing or submitting the DMR?

17           A.       Can I take a look at the --

18           Q.       Sure. Go right ahead.

19           A.       Okay. I'd like to refer you to  
20 item 11 of special conditions attachment H.

21           Q.       H did you say, sir?

22           A.       Attachment H, 11B.

23                       MR. JAWGIEL: May I approach the  
24 witness?

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1                       HEARING OFFICER SUDMAN: Sure.

2                       THE WITNESS: Can I read from this?

3 BY MR. JAWGIEL:

4           Q.       Sure.

5           A.       It says: All reports required by  
6 permits or other information requested by the agency  
7 shall be signed by a person described in paragraph A  
8 or by a duly authorized representative of that  
9 person.

10                       The person is a duly authorized

11 representative only if the authorization is made in  
12 writing by person described in paragraph A and the  
13 authorization specifies either an individual or  
14 position responsible for the overall operation of  
15 the facility from which the discharge originates  
16 such as the plant manager, superintendent or -- and  
17 that's where my copy stops.

18 Q. Okay. Now, maybe you're  
19 misunderstanding my question. My question is not to  
20 who has to authorize the DMRs. I think that's what  
21 you're addressing with respect to this paragraph.

22 My question to you is -- before we  
23 even get to the point of having to submit a DMR,  
24 there's a requirement in the permit that a DMR be

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1 submitted, period, not that it be authenticated but  
2 that it actually be submitted. Where in the permit  
3 language does it require anyone other than the named  
4 permittee to have to submit a DMR?

5 A. The NPDES permit requires a permittee  
6 to submit the DMR.

7 Q. Okay. The named permittee; is that  
8 correct?

9 A. It doesn't say named permittee but --

10 Q. But that's your understanding?

11 A. It says that the permittee shall  
12 submit the discharge monitoring report form.

13 Q. Okay. Now, let's talk about the  
14 discharge monitoring reports that are signed. Let's  
15 look at Exhibit 3 just for an example. You'll see  
16 that it says here in the certification between  
17 identifying Richard Frederick, vice president, and  
18 the date and then a signature area that: I certify  
19 I am familiar with the information contained in this  
20 report and that to the best of my knowledge and  
21 belief such information is true, complete and  
22 accurate. Is that your understanding of what the  
23 certifications say, sir?

24 A. That's what it says.

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1 Q. The certification doesn't require the  
2 signator to verify the information, it just asked  
3 them to report to the best of their knowledge; isn't  
4 that correct?

5 A. That's correct.

6 Q. Okay. Sir, let's talk a little bit  
7 more about what we see in these DMR reports. I  
8 think the reports you identified during the State's

9 case -- we went through a number of exhibits which  
10 show that there was a higher level than permitted by  
11 the permit itself and that's going to be the area  
12 that I'm going to talk about just to get you up to  
13 where I am with these questions.

14                   You had indicated earlier there  
15 are certain factors that can affect the levels that  
16 are in the DMRs, weather can be one, technique in  
17 how you take the sampling. Other factors can be  
18 involved as well; is that correct?

19           A.       That's correct.

20           Q.       What are some of those other factors  
21 that affected the DMR level reporting?

22           A.       Testing procedures.

23           Q.       Okay. And what else other than  
24 testing procedures, weather, what else can affect

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1 those levels?

2           A.       I'm not really sure.

3           Q.       Have you ever worked in the field,  
4 sir?

5           A.       Yes, I have.

6           Q.       Okay. So you've had some experience  
7 with conditions that are in the field; is that

8 correct?

9 A. I've never worked in the field  
10 operations section, no.

11 Q. Okay. So you've never been out in the  
12 field to determine whether or not there may be other  
13 factors that are actually in a site that could  
14 affect the levels; is that correct?

15 A. Not while I was working at the EPA.

16 Q. Okay. Have you ever had that  
17 experience?

18 A. Prior to becoming -- or prior to  
19 working with the Illinois EPA, I worked at an  
20 industrial waste farm treatment plant in Champaign,  
21 Illinois.

22 Q. Okay. But that would be the limit of  
23 your experience is a waste treatment plant in  
24 Champaign, Illinois?

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1 A. Yes.

2 Q. You haven't worked in areas where  
3 there is farmland necessarily adjacent to an asphalt  
4 plant or anything along those lines; is that  
5 correct?

6 A. That's correct.

7 Q. So as you sit here today, you wouldn't  
8 know what factors may or may not affect the DMRs  
9 submitted by Skokie Valley because you've never been  
10 out in the field to decide whether or not there may  
11 be other contributing factors other than weather and  
12 the way it's tested; is that correct?

13 A. That's correct.

14 Q. Now, again, referring you back to  
15 Exhibit No. 3, you'll see that there's also a note  
16 in the comment section. And the DMR allows for  
17 comments to explain what's in the DMR; is that  
18 correct?

19 A. That's correct.

20 Q. And the whole purpose of that section  
21 is so that the people who are testing can advise  
22 maybe of an unusual situation that may affect the  
23 reporting or whatever they want to put in there; is  
24 that correct?

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1 A. That's correct.

2 Q. And you can see that there's a comment  
3 that says: High content of total suspended solids  
4 was rated very high due to amount of rain that we  
5 had because of runoff of adjoining farmland field --

6 and so on and so forth -- that adjoins our property.

7 Do you see that comment?

8 A. Yes, I do.

9 Q. And that would be a situation that  
10 would affect or elevate the levels reported in the  
11 DMR; is that correct?

12 A. I suppose so.

13 Q. So looking at this report in and of  
14 itself, would that from your experience in your  
15 department raise any questions?

16 MR. COHEN: Object to the form of that  
17 question.

18 MR. JAWGIEL: Should I rephrase it?

19 HEARING OFFICER SUDMAN: Yeah, please.

20 MR. JAWGIEL: Sure. No problem.

21 BY MR. JAWGIEL:

22 Q. With respect to Exhibit 3, as we look  
23 at it in total, based on your experience in your  
24 department, would what we see in Exhibit No. 3 cause

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1 your department to take any remedial action?

2 MR. COHEN: Objection to the form of  
3 the question and the use of the word  
4 remedial.

5 HEARING OFFICER SUDMAN: I think he  
6 can answer it. If you don't know, you can  
7 say you don't know.

8 THE WITNESS: Well, the NPDES permit  
9 doesn't say that limits only need to be met  
10 when there's not any rainfall.

11 BY MR. JAWGIEL:

12 Q. That wasn't my question, though, sir?

13 MR. JAWGIEL: And I ask that his  
14 answer be struck from the record as  
15 nonresponsive.

16 HEARING OFFICER SUDMAN: I agree.  
17 Please answer the question. Do you need him  
18 to ask again?

19 THE WITNESS: That would be helpful.

20 MR. JAWGIEL: Sure.

21 BY MR. JAWGIEL:

22 Q. At any point in time, if you don't  
23 understand a question I ask, which may happen again,  
24 just let me know.

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1 With respect to Exhibit No. 3, as  
2 we see the report's data information in conjunction  
3 with the comment section, based on your 24 years of

4 experience with this department would this report in  
5 and of itself merit any sort of action on your  
6 department's behalf?

7 A. One report on its own would not  
8 usually.

9 Q. Okay. Would one report on its own  
10 without the comment section that we see here in  
11 Exhibit No. 3 merit any sort of action on the part  
12 of your department at all?

13 A. Usually not.

14 Q. Would two reports month to month, back  
15 to back merit any sort of action on the part of your  
16 department in it's course of handling these DMRs?

17 A. It's possible.

18 Q. Who is that left up to to decide?

19 A. The compliance individuals that are  
20 reviewing the DMRs.

21 Q. So I think it was Ms. -- what was her  
22 name? I apologize.

23 A. Ms. Hopper.

24 Q. -- Ms. Hopper and the individual who

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1 was in the field; is that correct?

2 A. It's possible.

3 Q. And what, if anything, would  
4 Ms. Hopper do if there were two reports  
5 consecutively that showed high levels -- higher than  
6 permitted by the permit?

7 A. It could consider the possibility of  
8 sending a compliance inquiry letter.

9 Q. And so we don't have a compliance  
10 inquiry letter here today, do we?

11 A. Not that I'm aware of.

12 Q. So based on what we have here today  
13 and based on your knowledge, nothing was done by the  
14 department with respect to Exhibit  
15 No. 3; is that right?

16 A. That's correct.

17 Q. Was any action taken with respect to  
18 Exhibit No. 9 by your department?

19 A. I don't know.

20 Q. And as a matter of course, your  
21 department would have reviewed Number 9, not only  
22 Ms. Hopper, but somebody else in the field as well;  
23 is that right?

24 A. Yes.

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1 Q. And based on the knowledge you have

2 here that you don't know whether anything was done  
3 with respect to this particular report, you would  
4 have no knowledge that this  
5 report -- well, strike that question.

6                               Was there any action taken by your  
7 department with respect to Exhibit No. 10?

8               A.       I don't know.

9               Q.       Was there any action taken by your  
10 department with respect to Exhibit No. 11?

11              A.       I don't know.

12              Q.       Was there any action taken by your  
13 department with respect to Exhibit No. 12?

14              A.       I don't know.

15              Q.       Was there any action taken on behalf  
16 of your department with respect to Exhibit No. 13?

17              A.       I don't know.

18              Q.       Was there any action taken on behalf  
19 of your department with respect to  
20 Exhibit 14?

21              A.       I don't know.

22              Q.       Was there any action taken on behalf  
23 of your department with respect to  
24 Exhibit 15?

1 A. I don't know.

2 Q. Was there any action taken on behalf  
3 of your department with respect to  
4 Exhibit 16?

5 A. I don't know.

6 Q. Is it your understanding, sir, you're  
7 here to testify as the representative of the  
8 compliance department?

9 A. Yes, that's true.

10 Q. Who in your department other than  
11 yourself would know whether or not any action was  
12 taken by your department other than what we have  
13 here today regarding Exhibits 9 through 17?

14 A. The compliance individual that would  
15 have prepared any actions.

16 Q. And they would have reported to you,  
17 sir?

18 A. At that time, they would have reported  
19 to Roger Callaway.

20 Q. The compliance individuals we talked  
21 about, Ms. Hopper, the other individual would have  
22 been Mr. Kallis?

23 A. No. Roger Callaway.

24 Q. No, the other individual who would

1 have been in the field, was that

2 Mr. Callaway?

3 A. No.

4 Q. Okay. The individual who would have  
5 been in the field with respect to the time period of  
6 Exhibit Nos. 9 through 17 --

7 A. I'm not sure who was in the field  
8 responsible for it at that time.

9 Q. I take it, though, based on the  
10 procedures used by your department, it's your  
11 understanding that each of these reports, Exhibits 9  
12 through 17, were examined by your department?

13 A. Yes, that's true.

14 Q. When did you first become aware of  
15 these particular levels reported in Exhibits 9  
16 through 17, would it have been when you prepared  
17 documentation for this case?

18 A. That's correct.

19 Q. Do you know why Skokie Valley was  
20 required to have the NPDES permit?

21 A. No, I don't.

22 Q. Isn't the whole purpose behind having  
23 Ms. Hopper review the DMRs is so that early  
24 compliance can be adhered to; is that correct? Do

1 you understand the question?

2 A. Yes, I do.

3 Q. Okay.

4 A. Yes, that would be a benefit.

5 Q. The whole idea behind it is that  
6 Ms. Hopper will note something, send out a letter,  
7 try to gain compliance as soon as possible; isn't  
8 that correct?

9 MR. COHEN: Objection. That question  
10 calls for speculation on the actions of what  
11 Ms. Hopper might do after her review.

12 MR. JAWGIEL: He's the head of the  
13 department.

14 HEARING OFFICER SUDMAN: He can answer  
15 if he knows what the procedures are  
16 generally.

17 THE WITNESS: Well, when we review  
18 discharge monitoring report forms, we look  
19 for a significant amount of compliance.

20 BY MR. COHEN:

21 Q. And how frequently do you review  
22 discharge monitoring reports or NPDES permit  
23 reports?

24 A. They are reviewed monthly as they come

1 in.

2 Q. Okay. So monthly you're reviewing  
3 reports for compliance; is that correct?

4 A. Yes.

5 Q. And how many reports does your  
6 department receive, let's say, back in 1986? How  
7 many reports do they receive, DMR reports, in any  
8 given month?

9 A. I don't know the exact number.

10 Q. Would you say thousands?

11 A. I would say it would be over 2000 a  
12 month.

13 Q. And how many people do you have  
14 working on reviewing the DMR reports other than  
15 Ms. Hopper?

16 A. I don't know at that time.

17 Q. I take it -- you identified one  
18 individual who logs the reports. Was it only one  
19 person who would log over 2000 reports a month?

20 A. That's correct.

21 Q. Now, how many field representatives  
22 did you have basically in the late '80s, early '90s?

23 A. I don't know.

24 Q. Getting back to what we were talking

1 about, isn't it the policy and procedures as you  
2 understand them of your department -- the whole  
3 purpose behind reviewing the DMRs is to send out a  
4 compliance letter if the DMR is not in compliance so  
5 that you can gain compliance from the permittee as  
6 soon as possible?

7 A. That's correct.

8 Q. When did you gather these reports for  
9 the State?

10 A. Within the last month or so.

11 Q. Would it be fair to say that your  
12 department wasn't too concerned about the compliance  
13 of Skokie Valley with respect to these reports until  
14 this case?

15 MR. COHEN: Objection, augmentative.

16 HEARING OFFICER SUDMAN: Sustained.

17 BY MR. JAWGIEL:

18 Q. You said it was unusual for there to  
19 be identical information on a DMR from a permittee;  
20 is that correct?

21 A. Yes.

22 Q. Have you reviewed the series of DMRs  
23 submitted by anyone else in preparation for your  
24 testimony today other than Skokie Valley?

1           A.        Could you repeat the question, please?

2           Q.        Sure.

3                        In preparation for your testimony  
4 here today, have you reviewed the series of DMRs  
5 submitted by any other company other than Skokie  
6 Valley?

7           A.        Yes, in the normal course of work.

8           Q.        Have you literally reviewed all the  
9 reports and determined whether or not they're  
10 identical?

11          A.        No, not all of the reports, but I am  
12 familiar with discharge monitoring reports.

13          Q.        Well, my question to you is then, sir,  
14 you indicated it is unusual but have you -- well,  
15 let me ask you this question: Is it part of your  
16 responsibility in the position you hold in your  
17 department to review reports to determine whether or  
18 not the data contained therein is identical to any  
19 other DMR report submitted by that particular  
20 company?

21          A.        It's not my specific responsibility.

22          Q.        Is there anybody in the department who  
23 has that responsibility?

24 A. Well, the individuals that review the

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1 reports would look for something like that.

2 Q. Okay. And the individual who would  
3 have reviewed the reports then would have sent out a  
4 compliance letter if they thought there was  
5 something suspicious about the reporting if it was  
6 identical; is that correct?

7 A. I'm assuming so.

8 Q. Do you know whether or not your  
9 department thought that the DMRs submitted by Skokie  
10 Valley with respect to the ones that had identical  
11 information was suspicious?

12 A. Back in the late '80s?

13 Q. I was talking about the period of time  
14 between the late '80s to the early '90s as counsel  
15 has framed this period of time?

16 A. I was not aware of it at that time.

17 Q. Did you become aware of it after this  
18 case for the very first time?

19 A. Yes.

20 Q. Do you have any information which  
21 would lead you to believe that Larry Frederick, also  
22 known as Ed Frederick, actually participated in

23 taking these samples?

24 A. I don't.

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1 Q. Do you have any information whether or  
2 not Richard Frederick actually took the samples that  
3 are reported in the DMR?

4 A. I don't know that either.

5 Q. Do you have any information that  
6 Larry Frederick tested the samples that were  
7 submitted in the DMR for Skokie Valley?

8 A. From reviewing the files, I know that  
9 the samples were performed -- or the tests were  
10 performed at Northshore Sanitary District.

11 Q. And outside service?

12 A. Yes.

13 Q. And are you familiar with that  
14 particular service?

15 A. Just to the extent that they're also a  
16 NPDES permittee.

17 Q. I take it that they also do testing  
18 for a variety of companies other than Skokie Valley;  
19 is that correct?

20 A. Apparently so.

21 Q. Are you aware of any attempts by

22 Skokie Valley to correct any reports that may have  
23 been duplicative?

24 A. No, I'm not.

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1 Q. Did you look for that information when  
2 you reviewed this file?

3 A. I did not see any reports that had  
4 been corrected.

5 Q. That wasn't my question, though, sir.  
6 My question was did you look for that information?

7 A. I reviewed the information in our  
8 files. I did not see it.

9 Q. Did you look for information as far as  
10 correcting reports -- reports being corrected or  
11 communication regarding correcting or anything along  
12 those lines?

13 A. No, I didn't.

14 Q. Do you have a chemical background at  
15 all, sir?

16 A. No, I don't.

17 Q. What is your education?

18 A. Well, I have a bachelor of science  
19 degree in environment biology.

20 Q. Okay. When did you receive that?

21 A. In 1976.

22 Q. Did you go on to an advanced degree in  
23 environmental biology?

24 A. No, I didn't.

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1 Q. Have you taken any continuing  
2 education courses with respect to environmental  
3 biology?

4 A. No, I haven't.

5 Q. Is there any environmental impact from  
6 the information -- well, strike that.

7 Would you agree with me, sir, that  
8 you don't know if there was any environmental impact  
9 in the levels reported in the DMRs from Exhibits  
10 9 through 17?

11 A. I only know it exceeds the permit  
12 limits.

13 Q. So as you sit here today, you don't  
14 have an opinion that there was actually an  
15 environmental impact based on the data in those  
16 exhibits; is that correct?

17 A. I don't have any information about  
18 that.

19 Q. If a company goes out of business, is

20 it still required to file DMRs under a permit?

21 A. It's my understanding they are until  
22 the permit gets terminated.

23 Q. And how can a permit get terminated?

24 A. A letter is submitted usually to our

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1 permit section who processes the termination  
2 request.

3 Q. Or they can allow it to expire as  
4 well, is that correct, the permittee allow the  
5 permit to expire?

6 A. That's my understanding, yes.

7 Q. Are you aware of any cases where  
8 Skokie Valley was found guilty of filing erroneous  
9 DMR reports?

10 A. No.

11 Q. Would you agree with this statement,  
12 sir, that the Illinois EPA would have never brought  
13 charges against Skokie Valley for failure to file  
14 DMR reports if the incident at the Avon drainage  
15 ditch didn't occur?

16 MR. COHEN: Objection. This witness  
17 cannot testify for the Illinois EPA.

18 MR. JAWGIEL: I thought he was a

19 representative of the Illinois EPA? Maybe  
20 I'm under the wrong --

21 MR. COHEN: Well, under that form of  
22 the question --

23 HEARING OFFICER SUDMAN: You were  
24 asking him if he could what?

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1 MR. JAWGIEL: My question was isn't it  
2 true, sir, in your opinion would charges have  
3 been brought against Skokie Valley for  
4 failing to file DMR reports if the release at  
5 the Avon ditch did not occur.

6 HEARING OFFICER SUDMAN: I really  
7 don't think he's in a capacity to know that.

8 MR. JAWGIEL: Well, maybe I'll ask for  
9 an offer of proof.

10 HEARING OFFICER SUDMAN: Okay. Yes.  
11 Absolutely.

12 MR. JAWGIEL: May I ask some questions  
13 with respect to an offer of proof?

14 HEARING OFFICER SUDMAN: Yes.

15 BY MR. JAWGIEL:

16 Q. Sir, you've certainly had  
17 communications with the attorneys --

18 MR. COHEN: Excuse me. If you want to  
19 make an offer of proof, you can make the  
20 offer of proof. It doesn't come by way of  
21 questions to the witness.

22 MR. JAWGIEL: It certainly does. An  
23 offer of proof allows me to ask questions of  
24 the witness to establish a foundation to

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1 bring in evidentiary material, which I will  
2 later attempt to submit, based on the voir  
3 dire of this particular witness outside the  
4 evidence that will be submitted in this case.

5 HEARING OFFICER SUDMAN: Okay. He may  
6 make it as an offer of proof.

7 MR. COHEN: Your Honor, if I may  
8 finish my objection?

9 HEARING OFFICER SUDMAN: Yes.

10 MR. COHEN: The question contradicts  
11 the history of this case. There was a  
12 complaint filed in this case long before the  
13 first amended complaint and the second  
14 amended complaint. The first amended  
15 complaint later adds the water pollution  
16 count. I just want to state that for the

17 record.

18 HEARING OFFICER SUDMAN: Okay. You  
19 may make your offer of proof.

20 MR. JAWGIEL: Thank you.

21 BY MR. JAWGIEL:

22 Q. Sir, I'm just going to ask you a  
23 series of questions; this may or may not go on the  
24 record. You had a series of conversations I take it

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1 with representatives of the State; is that correct?

2 MR. COHEN: Object to the form of the  
3 question, no time frame, no content.

4 MR. JAWGIEL: I'll rephrase it.

5 HEARING OFFICER SUDMAN: Okay. Thank  
6 you.

7 BY MR. JAWGIEL:

8 Q. With respect to this case that we're  
9 here for today, you've had a series of conversations  
10 with representatives of the State, have you not?

11 MR. COHEN: Objection again, no time  
12 frame. We're talking about a time period of  
13 over ten years.

14 HEARING OFFICER SUDMAN: Would you  
15 like to be a little more specific?

16 MR. JAWGIEL: Sure.

17 BY MR. JAWGIEL:

18 Q. When did you have your first  
19 conversation, if any conversations, with the State  
20 regarding the case that we're here for today?

21 A. May I ask for a clarification? What  
22 do you mean by the State?

23 Q. Well, this case is being brought by  
24 the People of the State of Illinois. They have

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1 representatives who are attorneys out of the  
2 Attorney General's Office and various assistants.

3 MR. COHEN: Object to the form of the  
4 question. The witness works for the State of  
5 Illinois.

6 MR. JAWGIEL: Well, now he is their  
7 client.

8 HEARING OFFICER SUDMAN: Right. It  
9 was confusing. He didn't understand who he  
10 meant by the State. I think he was just  
11 explaining.

12 MR. JAWGIEL: Yeah. I'm just trying  
13 to clarify the State of Illinois represented  
14 by the Attorney General's Office and the

15 various --

16 HEARING OFFICER SUDMAN: So the  
17 Attorney General's Office basically.

18 MR. JAWGIEL: Basically.

19 THE WITNESS: A month or so ago in  
20 preparation for this.

21 BY MR. JAWGIEL:

22 Q. Okay. And in preparation for this  
23 case, you were the person from your understanding  
24 who was going to gather information regarding the

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1 DMRs; is that correct?

2 A. Regarding the DMR submissions,  
3 nonsubmissions.

4 Q. Okay. And was it your understanding  
5 that based on your conversations with various  
6 representatives from the Attorney General's Office  
7 that the whole purpose behind this cause of action  
8 was really the discharge into the Avon drainage  
9 ditch in Libertyville?

10 A. No.

11 Q. Did they discuss that with you at all?

12 A. No, not at that time.

13 Q. Have they ever discussed that with

14 you?

15 A. I've been made aware of it.

16 Q. Okay. When?

17 A. Well, to review the information in the  
18 files.

19 Q. Okay. But when, a month ago, two  
20 months ago?

21 A. Within the last couple of weeks.

22 MR. JAWGIEL: Okay. He's only talked  
23 about this for the past couple of weeks, your  
24 Honor. I'm not going to go into that line of

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1 questioning.

2 HEARING OFFICER SUDMAN: Okay.

3 MR. JAWGIEL: I can't seem to --  
4 obviously, this case has been around much  
5 longer than a couple of weeks as we all have  
6 well-labored through, so I will withdraw that  
7 series of questions.

8 HEARING OFFICER SUDMAN: So we're  
9 ending the --

10 MR. JAWGIEL: Right. I'll end the  
11 offer as well. Thank you.

12 HEARING OFFICER SUDMAN: Okay.

13 BY MR. COHEN:

14 Q. Based on your conversations with the  
15 State, is it your understanding there was some sort  
16 of discharge into the Avon drainage ditch in  
17 Libertyville?

18 MR. COHEN: Objection, your Honor.  
19 He's asking for communications with his  
20 attorney. It has no relevance to what this  
21 witness is here to testify about and no  
22 bearing on what he's already testified to.

23 HEARING OFFICER SUDMAN: Didn't you  
24 just ask him that?

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1 MR. JAWGIEL: No. It's a different  
2 question. My question now was based on your  
3 conversations with the State, is it your  
4 understanding that there was a release of  
5 material into the Avon drainage ditch?

6 HEARING OFFICER SUDMAN: Well, I  
7 thought he had already answered that?

8 MR. JAWGIEL: Well, that was in the  
9 offer of proof. I'm now going back into my  
10 case -- or the cross-examination and I am  
11 going to put that portion of it on the

12 record.

13 HEARING OFFICER SUDMAN: You can  
14 answer it.

15 THE WITNESS: I wasn't specifically  
16 talking to about that.

17 BY MR. JAWGIEL:

18 Q. Do you have any understanding  
19 whatsoever that there was a release of some sort of  
20 material into the Avon drainage ditch in  
21 Libertyville?

22 MR. COHEN: Object to the form of the  
23 question, no time frame.

24 MR. JAWGIEL: That lead to this case.

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1 HEARING OFFICER SUDMAN: What was the  
2 question? Could you repeat the question?

3 MR. JAWGIEL: Sure. I'll repeat the  
4 question.

5 BY MR. JAWGIEL:

6 Q. Is it your understanding, sir, that  
7 one of the complaints of the State is that there was  
8 a release into the Avon drainage ditch in  
9 Libertyville? Do you have that understanding as you  
10 sit here today?

11           A.       I do now, but I didn't at the time I  
12 was preparing for the DMR submission records.

13           Q.       But that's not my question.  You do  
14 now?  When did you first gain that understanding?

15           A.       Probably about a week ago when I was  
16 reviewing files in preparation of this.

17           Q.       Fair enough.

18                               And based on your review of the  
19 DMRs and knowing that there was a release into the  
20 Avon drainage ditch, would the failure to file the  
21 DMRs by Skokie Valley as alleged by the State have  
22 caused the Avon drainage ditch discharge in your  
23 opinion?

24                               MR. COHEN:  Objection, calls for

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1           speculation.

2                               HEARING OFFICER SUDMAN:  Sustained.

3 BY MR. JAWGIEL:

4           Q.       Well, in your review of the DMRs --  
5 and I think you consider yourself an expert in  
6 reviewing DMRs; is that correct?

7           A.       Yes.

8           Q.       Okay.  And being an expert in  
9 reviewing DMRs and after reviewing DMRs that were

10 submitted by Skokie Valley and the ones that weren't  
11 submitted, obviously, you couldn't review those, but  
12 in reviewing the file of Skokie Valley in  
13 preparation for your testimony here today, is there  
14 anything in the DMR reports to you that would link  
15 what was discharged in the Avon drainage ditch to  
16 anything in the reports?

17 MR. COHEN: Object to the form of the  
18 question. I certainly don't understand it.

19 HEARING OFFICER SUDMAN: I'm going to  
20 allow it, but you might want to --

21 MR. JAWGIEL: Well, let's see if he  
22 understands it. If he doesn't --

23 HEARING OFFICER SUDMAN: Did you get  
24 that -- in your professional opinion he's

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1 asking you.

2 THE WITNESS: I'm not aware of the  
3 connection.

4 HEARING OFFICER SUDMAN: Okay.

5 BY MR. JAWGIEL:

6 Q. Fair enough.

7 If Skokie Valley no longer holds  
8 an NPDES permit, is there any chance that they will

9 fail to report a DMR in the future?

10 MR. COHEN: Objection, calls for  
11 speculation.

12 BY MR. JAWGIEL:

13 Q. In your experience.

14 HEARING OFFICER SUDMAN: Could you  
15 repeat the question?

16 MR. JAWGIEL: Sure. I'll rephrase it.

17 HEARING OFFICER SUDMAN: Could you?

18 Thank you.

19 BY MR. JAWGIEL:

20 Q. Has it been your experience, sir, in  
21 the past 24 years that if a company no longer holds  
22 an NPDES permit that they are not required to file a  
23 DMR?

24 A. Once the permit expires, they're not

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1 required to.

2 Q. So if Skokie Valley, in your opinion,  
3 no longer has an NPDES permit, they're not required  
4 as we sit here today to file a DMR; is that correct?

5 A. That's correct.

6 Q. And in your experience and expertise,  
7 Skokie Valley would be required to file a DMR until

8 an NPDES permit is granted to them if ever in the  
9 future?

10 A. That's correct.

11 Q. Does the permit require the permittee  
12 to maintain records for a certain period of time  
13 with respect to the DMRs?

14 A. Yes.

15 Q. How long?

16 A. I need to refer --

17 Q. Take a look. I think it's Exhibit 1.

18 A. Three years from the effective date of  
19 the permit they need to maintain their records.

20 Q. Three years from the effective date of  
21 the permit; is that correct?

22 A. I can read what it says.

23 Q. Sure. Please.

24 HEARING OFFICER SUDMAN: Would you

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1 state where you're reading from, the  
2 paragraph?

3 THE WITNESS: Exhibit 1, page 4,  
4 attachment H, item 10B.

5 HEARING OFFICER SUDMAN: Thank you.

6 THE WITNESS: The permittee shall

7 retain all records of monitoring information,  
8 including all calibration and maintenance  
9 records and all original script chart  
10 recording for continuous monitoring  
11 instrumentation, copies of all reports  
12 required by this permit and records of all  
13 data used to complete the application for  
14 this permit for a period of at least three  
15 years from the date of this permit,  
16 management report or application. The period  
17 may be extended by request of the agency at  
18 any time.

19 BY MR. JAWGIEL:

20 Q. Okay. Now with respect to the date of  
21 this permit, is it your understanding the date is  
22 when the permit was issued or the date that the  
23 permit expires based on your expertise?

24 A. It would be from effective date of the

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1 permit.

2 Q. So the date that it was issued; is  
3 that correct?

4 A. Well, no, that's not correct. It  
5 would be from the date of when those records

6 became --

7 Q. Okay. So in 1987, Skokie Valley would  
8 have been required to hang on to those documents  
9 until 1990 based on your interpretation?

10 A. Yes.

11 Q. In 1997, Skokie Valley would have been  
12 required to hang on to those documents until 2000?

13 A. Yes.

14 Q. Beyond that, there's no expectation;  
15 is that correct?

16 A. Unless specifically requested by the  
17 agency.

18 Q. Do you have any information that your  
19 agency requested Skokie Valley to maintain your DMRs  
20 any time longer than the three-year period listed in  
21 a permit?

22 A. I don't.

23 Q. Have you ever after you've taken  
24 employment with your department ever -- did the

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1 person actually stamp the reports?

2 A. No.

3 Q. You were never the person that  
4 actually logged the information either; is that

5 correct?

6 A. No.

7 MR. JAWGIEL: If I may have one  
8 minute?

9 HEARING OFFICER SUDMAN: (Indicating.)

10 BY MR. JAWGIEL:

11 Q. Sir, if we look at Exhibit 8, do you  
12 see 8A -- well, actually let's go to 8B. Do you see  
13 8B there, sir?

14 A. Yes.

15 Q. Do you see that Skokie Valley is  
16 listed somewhere about the top -- actually top third  
17 or so of the page; is that correct?

18 A. That's correct.

19 Q. You also see, though, at the bottom  
20 half of the page a company by Bimet Corp, dash,  
21 Morris. Do you see that there, sir?

22 A. Yes.

23 Q. And we see that they didn't report any  
24 DMRs until November, is that correct, for this

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1 particular year?

2 A. No. It looks like they submitted in  
3 October.

4 Q. Okay. October. Let's say October.

5 A. October DMR, November.

6 Q. Okay. And was there any action taken  
7 by your department with respect to this company?

8 MR. COHEN: Objection, irrelevant.

9 MR. JAWGIEL: I think it goes clearly  
10 to whether or not this is a witch-hunt. I  
11 want to know whether or not these documents  
12 are enforced and what's the purpose behind  
13 these documents.

14 The State is holding this out as  
15 the foundation for bringing allegations  
16 against my client. I want to know whether or  
17 not they brought these allegations against  
18 everybody or are we being picked out.

19 HEARING OFFICER SUDMAN: Well, repeat  
20 your question again.

21 MR. JAWGIEL: Sure.

22 There's a line there for Bimet,  
23 B-I-M-E-T, Corp, dash, Morris and their first  
24 DMR as we've established through the

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1 testimony was filed in October of that year,  
2 and my question was did his department take

3 any action against that particular company.

4 HEARING OFFICER SUDMAN: And your  
5 objection was --

6 MR. COHEN: It's irrelevant. There's  
7 certainly insufficient foundation to ask this  
8 witness the question.

9 MR. JAWGIEL: He was the head of the  
10 department.

11 HEARING OFFICER SUDMAN: Well, I'll  
12 let you ask that one. Is this a whole line  
13 of questioning on --

14 MR. JAWGIEL: Well, there's a couple  
15 of companies that we see in the same  
16 situation. I can ask him in whole.

17 HEARING OFFICER SUDMAN: You can ask  
18 in general.

19 MR. COHEN: May I make a general  
20 objection?

21 HEARING OFFICER SUDMAN: Yes.

22 MR. COHEN: In the format that he's  
23 asking the question, there's no foundation  
24 laid because there's no evidence in the

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1 record as to when the permit he's asking

2           about was issued and what the particular  
3           requirement of that permit is to know whether  
4           there is a violation just by looking at the  
5           log.

6                         HEARING OFFICER SUDMAN:  Actually,  
7           I've decided I'll allow his answer as an  
8           offer of proof.

9                         MR. JAWGIEL:  Well, now, let's take a  
10          step back.  If that's the State's position,  
11          let's look at Cartex in Addison.  They  
12          reported something, I believe, in May and  
13          then didn't report until again in November.  
14          So I think that clearly shows a nice gap of  
15          time of about five months or so where there  
16          was no reporting.  I want to know whether or  
17          not Cartex was -- were any actions taken by  
18          the department against Cartex for these  
19          violations?

20                        HEARING OFFICER SUDMAN:  Well, I don't  
21          think it's relevant, but I'm going to allow  
22          you to ask generally if he knows about the  
23          legal status of those companies.  But I mean,  
24          I don't think it's relevant to this case.

1           That's why I'm allowing you to ask one  
2           question as an offer of proof, one or two.

3 BY MR. JAWGIEL:

4           Q.       Sir, if we look through Exhibit 8 in  
5           its entirety, we see spots here where various other  
6           companies other than Skokie Valley had failed to  
7           submit DMR reports for various periods of time.

8                       Some of them had filed DMRs and  
9           failed to do so for a while and then filed another  
10          one. Are you aware of any of these companies being  
11          prosecuted for the failure to file their DMRs other  
12          than Skokie Valley?

13                       MR. COHEN: I have the same objection,  
14          your Honor.

15                       MR. JAWGIEL: Yeah, we'll note the  
16          objection.

17                       HEARING OFFICER SUDMAN: Objection  
18          noted.

19                       THE WITNESS: I'm not aware of it  
20          today.

21 BY MR. JAWGIEL:

22          Q.       Okay.

23          A.       But there could be an explanation why.

24          Q.       I'm not asking you for an explanation,

1     though, sir. I'm asking you to answer the question.

2                     MR. JAWGIEL: That's all I have for  
3     this witness. Thank you for your time.

4                     HEARING OFFICER SUDMAN: Thank you.

5                             Redirect?

6                     MR. COHEN: Your Honor, no redirect.  
7     Mr. Garretson was kind enough to come from  
8     Springfield. I would ask that he be excused.

9                     HEARING OFFICER SUDMAN: If there are  
10    no further questions for Mr. Garretson, you  
11    may be excused.

12                    THE WITNESS: Thank you.

13                             (Witness excused.)

14                    MR. COHEN: Also, your Honor, I would  
15    ask for a break.

16                    HEARING OFFICER SUDMAN: Yes, I agree.  
17    We will take a short recess of about five  
18    minutes, maybe ten.

19                    MR. COHEN: Okay.

20                             (Whereupon, after a short  
21                             break was had, the following  
22                             proceedings were held  
23                             accordingly.)

24                    HEARING OFFICER SUDMAN: We will go

1 back on the record with the People's next  
2 witness.

3 MR. MURPHY: Your Honor, the State  
4 calls Chris Kallis to the stand.

5 HEARING OFFICER SUDMAN: You may sit  
6 over here, Mr. Kallis. The court reporter  
7 will swear you in.

8 (Witness sworn.)

9 MR. JAWGIEL: Your Honor, can you just  
10 note my objection of having Mr. Kallis  
11 testify regarding the source of the  
12 contamination in the Avon drainage ditch? At  
13 this point in time -- unless you want me to  
14 bring it contemporaneous to --

15 HEARING OFFICER SUDMAN: No. I prefer  
16 you just make a standing objection now.  
17 Thank you.

18 MR. JAWGIEL: Okay. That way we  
19 don't --

20 HEARING OFFICER SUDMAN: Thank you. I  
21 appreciate that.

22 MR. COHEN: If I may just inquire, is  
23 that the same one from the motion in limine?

24 MR. JAWGIEL: Right, the motion in

1 limine just so I don't have to keep jumping  
2 up and down like a crazy man.

3 HEARING OFFICER SUDMAN: Thank you.

4 MR. MURPHY: Are all of the objections  
5 in the motion in limine?

6 MR. JAWGIEL: Right.

7 MR. MURPHY: Okay.

8 MR. JAWGIEL: Yeah, we'll stand it  
9 through the testimony.

10 HEARING OFFICER SUDMAN: Yes. Thank  
11 you.

12 WHEREUPON:

13 CHRIS KALLIS

14 called as a witness herein, having been first duly  
15 sworn, deposeth and saith as follows:

16 D I R E C T E X A M I N A T I O N

17 BY MR. MURPHY:

18 Q. Please state your name and spell your  
19 last name for the record?

20 A. Chris Kallis, K-A-L-L-I-S.

21 Q. Who is your employer?

22 A. Illinois Environmental Agency.

23 Q. How long have you been employed with  
24 the Illinois EPA?

1 A. Approximately 22 years.

2 Q. Which bureau do you currently work for  
3 at Illinois of EPA?

4 A. The Bureau of Water.

5 Q. How long has that bureau been known by  
6 that name?

7 A. I believe about -- and I get my times  
8 off -- about 12 years.

9 Q. Was there a different organization  
10 prior to that time?

11 A. What the bureau of water is is a  
12 consolidated bureau of what was once divisions.  
13 There was the division of water pollution control  
14 and the division of public water supply. What the  
15 bureau of water did is it consolidated them under  
16 one bureau. I work for the division of water  
17 pollution control.

18 Q. Thank you.

19 What is your job title at Illinois  
20 EPA?

21 A. Environmental protection specialist.

22 Q. How long have you been an environment  
23 protection specialist?

24 A. About 20 years.

1 Q. Okay. Can you briefly describe for  
2 the Board your duties as an environmental protection  
3 specialist for the Illinois EPA?

4 A. My duties are to conduct inspections  
5 and investigations to ensure compliance with the  
6 Illinois Environmental Protection Act and Title 35  
7 concerning water pollution.

8 Q. Okay. In your experience in doing  
9 that, have you had -- or during your time doing  
10 that, have you had some experience with what's known  
11 as the NPDES program?

12 A. Yes.

13 Q. What does that acronym stand for?

14 A. National Pollutant Discharge  
15 Elimination System.

16 Q. And how does that program function?

17 A. It functions by issuing NPDES permits  
18 to any entity, industry, municipality or otherwise  
19 that has the potential of discharging contaminants  
20 to waters of the State.

21 Q. Does it involve water quality  
22 standards?

23 MR. JAWGIEL: I'll object to the

24 leading nature.

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1 HEARING OFFICER SUDMAN: I think he's  
2 just laying some background. I'll allow it.

3 THE WITNESS: It was put into place to  
4 ensure water quality standards.

5 BY MR. MURPHY:

6 Q. Can you describe what types of water  
7 quality standards there are?

8 A. Under the statute there are water  
9 quality standards that are based on numerical  
10 concentrations of contaminants and there's also  
11 standards involving visual observations such as  
12 oils, grease, turbidity, odor.

13 Q. Okay. Thank you.

14 Can you briefly describe your  
15 education?

16 A. I have a bachelor's degree from  
17 Northeastern University.

18 Q. What is the bachelor's degree in?

19 A. Geography and environmental science --  
20 or the study.

21 Q. Is that a bachelor of science?

22 A. No.

23 Q. A bachelor of arts?

24 A. Yeah.

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1 Q. When did you receive that degree?

2 A. I received it in late 1977.

3 Q. Have you received any training from  
4 Illinois EPA or any other agency during your time  
5 with Illinois EPA?

6 A. I have received training from Illinois  
7 EPA and from USEPA.

8 Q. And that is concerning -- was that  
9 training concerning water pollution laws and  
10 regulations?

11 MR. JAWGIEL: Again, I'm going to  
12 object to the leading nature.

13 HEARING OFFICER SUDMAN: This is just  
14 background information. I'll allow it just  
15 so we can get through it more quickly.

16 THE WITNESS: Thank you.

17 The training that was done by  
18 Illinois EPA primarily concerned waste water  
19 treatment plants. It was a correspondence  
20 course that was given at the time I started  
21 the agency to all inspectors that were

22 starting with the agency to increase their  
23 ability of inspecting waste water treatment  
24 facilities.

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1 Concerning the NPDES permits, I  
2 have received some training from USEPA or at  
3 least sponsored by USEPA concerning storm  
4 water, the NPDES storm program.

5 BY MR. MURPHY:

6 Q. Okay. Switching now to the matter  
7 that brings us all here today, are you familiar with  
8 the site formerly known as Skokie Valley Asphalt in  
9 Grayslake that is the subject of this proceeding?

10 A. Yes.

11 Q. Okay. How are you familiar with that  
12 site?

13 A. Through the years I've inspected them  
14 many times.

15 Q. Can you give us some kind of time  
16 frame when you first started going there and how  
17 long those inspections lasted over time?

18 A. I believe I first started inspecting  
19 Skokie Valley Asphalt in the early '80s.

20 Q. Why were you going to Skokie Valley

21 Asphalt?

22 A. Initially it was to confirm what was  
23 there. We had a system, a list of many facilities,  
24 some that had NPDES permits and some that had

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1 pending NPDES permits, and my job was to go to these  
2 facilities and do a permit verification and also to  
3 determine compliance.

4 Q. Okay. Were there any other reasons  
5 later on why you would go to Skokie Valley Asphalt?

6 MR. JAWGIEL: Again, I'm going to  
7 object to the time frame with respect to  
8 when.

9 HEARING OFFICER SUDMAN: Would you  
10 like to --

11 MR. MURPHY: Well, he's already said  
12 during the 1980s.

13 HEARING OFFICER SUDMAN: Oh, during  
14 the 1980s?

15 MR. JAWGIEL: Okay. If it's limited  
16 to 1980, that's fine.

17 HEARING OFFICER SUDMAN: Okay.

18 THE WITNESS: In the 1980s, yes, I did  
19 inspect Skokie Valley Asphalt as a follow-up

20 to citizen complaints.

21 BY MR. MURPHY:

22 Q. What were the citizen complaints about  
23 generally?

24 MR. JAWGIEL: Your Honor, I'm going to

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1 object as to hearsay.

2 HEARING OFFICER SUDMAN: Well --

3 MR. JAWGIEL: It's pure hearsay.

4 MR. MURPHY: It's not offered for the  
5 truth of the matter as certain, your Honor.  
6 It's an offer to see why he's going to the  
7 site.

8 MR. JAWGIEL: Well, along with it, it  
9 has no relevance. The time frame of the  
10 complaint starts in 1988. We don't have --  
11 we have no relevance or any sort of causal  
12 connection between what they're eliciting  
13 from him or not.

14 He's already said he's been there  
15 since the 1980s until -- they haven't  
16 established when, but the bottom line is  
17 we're there. The foundation has been laid.  
18 Let's move on.

19 HEARING OFFICER SUDMAN: Your  
20 objection is noted, but I'm going to allow it  
21 because it does explain why he was there.

22 MR. JAWGIEL: But, your Honor, if I  
23 may just for the record, it has no relevance  
24 of why he was there because that's not part

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1 of the complaint.

2 MR. MURPHY: It is part of the  
3 complaint. It runs towards violations also  
4 relevant for Sections 33C and 42H.

5 HEARING OFFICER SUDMAN: I agree. I'm  
6 going to allow it.

7 THE WITNESS: Yes. In around 1987, I  
8 did inspect Skokie Valley Asphalt as a result  
9 of complaints of water quality violations in  
10 the Avon drainage ditch.

11 BY MR. MURPHY:

12 Q. Okay. Now, you mentioned that the  
13 inspections you performed happened in the 1980s.  
14 Did you also go there after that?

15 A. Yes.

16 Q. Okay. So into the 1990s?

17 A. Yes.

18 Q. What type of business is located at  
19 the Skokie Valley Asphalt site?

20 A. As long as I've been inspecting Skokie  
21 Valley Asphalt, they've used that site for storage  
22 of liquid asphalt and also as a transportation  
23 facility, a dispatch transportation facility.  
24 That's where they seemed to have kept all their

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1 trucks and so on.

2 Q. Were there any notable activities at  
3 the site that were of interest to you as an  
4 inspector?

5 MR. JAWGIEL: I'm going to object as  
6 to the time frame.

7 MR. MURPHY: In the 1980s.

8 HEARING OFFICER SUDMAN: Thank you.

9 MR. JAWGIEL: I'm going to object to  
10 relevance.

11 HEARING OFFICER SUDMAN: Overruled.

12 THE WITNESS: Yes. They had a  
13 treatment system for storm water runoff that  
14 consisted of an oil separator in the two-cell  
15 lagoon system on their site.

16 BY MR. MURPHY:

17 Q. Who were the owners of Skokie Valley  
18 Asphalt, if you know?

19 A. At the time, the owners were --

20 MR. JAWGIEL: I'm going to object as  
21 to speculation, your Honor. This is a  
22 corporation. There are owners, the  
23 shareholders.

24 HEARING OFFICER SUDMAN: He said if he

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1 knows. He was a site inspector. I mean, I'm  
2 going to allow him to answer it.

3 THE WITNESS: To the best of my  
4 knowledge, the owners were the Frederick  
5 brothers.

6 BY MR. MURPHY:

7 Q. Do you know their first names?

8 A. Yes. Richard and Larry -- or Edwin.  
9 I know that it's both Edwin and Larry.

10 Q. Did you ever know Skokie Valley  
11 Asphalt to have operated under a different name?

12 A. Yes.

13 Q. What was that different name?

14 A. Liberty Asphalt.

15 MR. JAWGIEL: I'm going to object as

16 to speculation with respect to the  
17 relationship and the corporate structure  
18 between Libertyville Asphalt and Skokie  
19 Valley unless there's something else to  
20 establish that.

21 There are two separate entities  
22 and that hasn't been established here, so he  
23 hasn't laid proper foundation for that  
24 question.

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1 HEARING OFFICER SUDMAN: Would you  
2 like to respond to that, Mr. Murphy?

3 MR. MURPHY: Sure. I asked him if he  
4 knew if the business, Skokie Valley Asphalt,  
5 ever operated under a different name and he  
6 said he knew and he gave me an answer.

7 MR. JAWGIEL: But he hasn't  
8 established the foundation of how he gained  
9 that knowledge. There has to be a foundation  
10 how he gained the knowledge that Skokie  
11 Valley operated under a different name under  
12 that corporate structure.

13 HEARING OFFICER SUDMAN: I don't think  
14 we need that at this point. He just asked

15           him if he knew if it operated under a  
16           different name. I'll allow it to stand as it  
17           is.

18                         MR. MURPHY: Thank you.

19 BY MR. MURPHY:

20           Q.        Are you familiar with the area  
21           surrounding the former Skokie Valley Asphalt site?

22           A.        Yes.

23           Q.        Okay. And how are you familiar with  
24           the area surrounding the former Skokie Valley

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1 Asphalt site?

2           A.        Just from inspecting Skokie Valley  
3 Asphalt and being the primary inspector for  
4 Lake County for dozens of years.

5           Q.        So these inspections occurred during  
6 the same time frame that you inspected the actual  
7 Skokie Valley Asphalt site?

8           A.        Yes.

9           Q.        And that was through the '80s and  
10 '90s, I believe?

11          A.        Yes.

12          Q.        Thank you.

13                         What did your inspections mainly

14 deal with at the Skokie Valley Asphalt site and the  
15 surrounding area?

16 A. They mainly dealt with their two-cell  
17 lagoon system, which was the primary source of any  
18 discharge from them during those times.

19 Q. And as a regulatory matter, why was  
20 that significant?

21 A. Well, according to their NPDES permit  
22 application, it was the main source of their  
23 discharge.

24 Q. Were you investigating violations of

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1 their NPDES permit?

2 A. In 1987, the first time.

3 Q. Were you ever investigating anything  
4 else?

5 A. Before that, it was primarily permit  
6 verification.

7 Q. What about water quality violations?

8 MR. JAWGIEL: Your Honor, if I may,  
9 he has a notepad that he's referring to on  
10 the desk and I ask that that be removed.

11 HEARING OFFICER SUDMAN: Okay. Thank  
12 you. I also ask that that be produced to us

13 so we can review it.

14 THE WITNESS: It's a personal notepad,  
15 your Honor.

16 HEARING OFFICER SUDMAN: Pardon me?

17 THE WITNESS: It's a personal notepad,  
18 your Honor.

19 MR. MURPHY: They can see it. I've  
20 got no problem with them seeing it.

21 HEARING OFFICER SUDMAN: Okay. Show  
22 him the page you were looking at.

23 MR. MURPHY: I'm just asking if --

24 THE WITNESS: Sir, sir -- I would like

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1 my personal notepad back, your Honor. Those  
2 are personal notes.

3 HEARING OFFICER SUDMAN: Were you  
4 reviewing that during your testimony that you  
5 had given?

6 THE WITNESS: I just referred as a  
7 date. I did write dates down.

8 MR. JAWGIEL: He's referring to it, so  
9 we're going to take a look at it.

10 THE WITNESS: Your Honor, this is a  
11 personal notepad; there are personal notes.

12 HEARING OFFICER SUDMAN: I understand  
13 that but when you bring it here --

14 THE WITNESS: Okay. I got you.

15 MR. MURPHY: Can I ask if he's going  
16 to need to refer to that during his --

17 HEARING OFFICER SUDMAN: Yes, please.

18 BY MR. MURPHY:

19 Q. Are you going to need to refer to that  
20 notebook during the rest of your testimony?

21 MR. JAWGIEL: I'll object. It hasn't  
22 been produced until now. This is a complete  
23 surprise. A witness is not allowed to write  
24 notes and bring them on the stand to help him

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1 testify. He's here to present documentation  
2 that will refresh his recollection and lay  
3 the proper foundation if he does not have  
4 personal knowledge. But a witness can't  
5 write out their testimony and take it to the  
6 stand and read it into the record.

7 MR. MURPHY: I don't think that's what  
8 he was doing. He looked for verification of  
9 a couple of dates.

10 MR. JAWGIEL: Regardless of what he

11 was doing with it. This is completely  
12 improper procedure to even allow the witness  
13 to bring a notepad up to the stand during  
14 testimony.

15 MR. MURPHY: No, it's not. It's  
16 perfectly acceptable.

17 THE WITNESS: Your Honor, I don't need  
18 it.

19 HEARING OFFICER SUDMAN: Okay. He's  
20 not going to use it.

21 MR. MURPHY: Can we have it back then?

22 MR. JAWGIEL: I'm going to review it.  
23 I still get a chance to review it. It's a  
24 document that he was using during the course

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1 of his testimony here today.

2 HEARING OFFICER SUDMAN: Okay. Take a  
3 minute, but look at it quickly. We'll wait  
4 for you.

5 (Mr. Jawgiel perusing  
6 the notepad.)

7 You've got about another 30 seconds.  
8 And I'll note for the record that I actually  
9 did not see you looking at any notes.

10 MR. JAWGIEL: And I also ask that you  
11 note for the record that the notepad was next  
12 to him before he handed it over to me and  
13 that he also admitted on the stand that he  
14 was reviewing it in his testimony.

15 HEARING OFFICER SUDMAN: So noted.

16 Please continue.

17 BY MR. MURPHY:

18 Q. There's a question that's pending and  
19 I believe it had to do with your inspections of the  
20 Skokie Valley Asphalt site and the surrounding  
21 having to do with water quality violations.

22 A. Yes.

23 Q. So that was another reason why you  
24 went there?

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1 A. Yes.

2 Q. Okay. Did Skokie Valley Asphalt have  
3 an NPDES permit to your knowledge?

4 A. Yes.

5 Q. Why was Skokie Valley Asphalt required  
6 to have an NPDES permit?

7 A. Because it was determined by field  
8 operations section that they had storm water runoff

9 associated with industrial activity that could be a  
10 threat to water quality.

11 Q. Now, can you explain what field  
12 operations section is?

13 A. It's a section of division of water  
14 pollution control that does the field inspections.

15 Q. For Illinois EPA?

16 A. For Illinois EPA, for the division of  
17 water pollution control.

18 Q. Mr. Kallis, you have a binder in front  
19 of you.

20 A. Yes.

21 Q. I'm going to refer you to Exhibit  
22 No. 19. Please take a moment to look at that.

23 (Witness perusing  
24 the document.)

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1 A. Okay.

2 Q. Do you recognize it?

3 A. Yes.

4 Q. What is it?

5 A. It's a memo dated August 9, 1991 to  
6 Margaret Howard from myself concerning Skokie Valley  
7 Asphalt.

8 Q. Okay. And are there attachments to  
9 that August 9, 1991 memo?

10 A. Yes. There's a memo dated June 4,  
11 1991 to Bill Bush from myself concerning Skokie  
12 Valley Asphalt.

13 Q. As long as you listed them, are there  
14 others?

15 A. There's a division of land pollution  
16 complaint investigation form and there's a letter  
17 from Tod Marvel, division of land pollution, FOS, to  
18 Gary King, EDG, dated  
19 July 18, 1988.

20 Q. What about after the GOPC component?

21 A. Right. After that, there is a  
22 compliance inquiry letter dated October 31 --  
23 ironically -- 1988 to Skokie Valley Asphalt from  
24 Roger Callaway, the compliance monitoring unit.

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1 There is a correspondence dated November 9, 1988  
2 signed by Richard Frederick to compliance assurance  
3 section.

4 There is a certified mail dated  
5 January 5, 1990, which was also a compliance inquiry  
6 letter also signed by Roger Callaway, and there is a

7 correspondence dated January 17, 1990 from Skokie  
8 Valley Asphalt signed by a Robert Christiansen,  
9 operations manager.

10 There's a September 13, 1990  
11 correspondence from Marlene McHenry, office  
12 administrator of permit section, division of water  
13 pollution control to Skokie Valley Asphalt.

14 There's an April 11, 1991 letter,  
15 compliance inquiry letter on failure to file permit  
16 renewal application signed by Roger Callaway. There  
17 is a response letter from Skokie Valley Asphalt  
18 dated April 22, 1991, signed by Edwin Frederick.

19 There's a May 7, 1991  
20 correspondence to Jan Hopper from Edwin Frederick.  
21 There's a sample result that I took dated March 21,  
22 1991.

23 Q. Did you attach those attachments to  
24 the August 9, 1991 memo?

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1 A. Yes, I did.

2 Q. When you prepared the August 9, 1991  
3 memo?

4 A. Yes.

5 Q. Is the August 9, 1991 memo used in the

6 ordinary course of Illinois EPA business?

7 A. Yes.

8 Q. Together with its attachments?

9 A. Yes.

10 Q. Is the August 9, 1991 memo together  
11 with the attachments kept in the ordinary course of  
12 Illinois EPA business?

13 A. Yes.

14 Q. Is that a true and accurate copy of  
15 the memo and the attachments?

16 A. Yes, it is.

17 Q. Mr. Kallis, can you tell the Board  
18 what was listed in the NPDES permit application as  
19 sources of -- potential sources of pollution?

20 A. The application listed gravel, sand,  
21 stone, recycled bituminous, concrete, pavement,  
22 asphalt, cemented tanks, gasoline, fuel, oil, and  
23 tanks.

24 Q. Did it mention anything else?

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1 A. I wrote: It is believed based on past  
2 reports that the bituminous concrete, which is  
3 stored in a huge pile, is a major source of  
4 contamination.

5 Q. In the NPDES permit application -- or  
6 does the NPDES permit application indicate how storm  
7 water is collected and treated at the Skokie Valley  
8 Asphalt site?

9 A. Yes.

10 Q. Can you explain how that --

11 A. Yes. Treatment consists of storm  
12 water routed via gravity to an oil/water separator,  
13 which is a triple basin separator, according to  
14 their permit application anyway in a storm water  
15 retention pond -- it was a two-cell pond -- in its  
16 two-cell pond.

17 Q. Can you describe how the oil separator  
18 works?

19 A. Well, a separator works as a skimming  
20 device using a series of layers (indicating).

21 Q. And what's the purpose of the  
22 oil/water separator?

23 A. To remove oil.

24 Q. Where did the storm water go after the

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1 storm sewer -- strike that.

2 Where did the storm water go after  
3 running through the oil/water separator and the

4 storm water retention ponds?

5 A. Well, the NPDES permit was for a  
6 tributary to Grayslake.

7 Q. So is that where the storm water would  
8 go after running through there?

9 MR. JAWGIEL: Your Honor, I'm going  
10 to objection. He hasn't laid a foundation  
11 where that particular drain ditch goes with  
12 this particular witness.

13 HEARING OFFICER SUDMAN: Well, I think  
14 that's what he's doing now.

15 Continue.

16 MR. MURPHY: Thank you.

17 THE WITNESS: Can you repeat the  
18 question?

19 BY MR. MURPHY:

20 Q. Where was the storm water to go after  
21 being routed through the oil/water separator and the  
22 storm water retention ponds?

23 A. It was to go to Grayslake. That's  
24 where it was to go according to the NPDES permit.

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1 Q. Is Grayslake a water of the State?

2 A. Yes.

3 Q. What kind of NPDES permit did Illinois  
4 EPA issue to Skokie Valley Asphalt?

5 A. A site-specific NPDES permit for their  
6 storm water runoff of this facility.

7 Q. What is the intent behind or purpose  
8 behind an NPDES site-specific permit?

9 A. The purpose behind an NPDES  
10 site-specific permit is to ensure that water quality  
11 standards are met by ensuring that the industry --  
12 that's the permittee so to speak -- monitors on a  
13 regular basis.

14 Q. During your inspection, did you ever  
15 observe that Skokie Valley Asphalt was not in  
16 compliance with its April 4, 1986 NPDES permit?

17 A. Yes.

18 Q. More than once?

19 A. Yes.

20 Q. Do you note in your August 9, 1991  
21 memo why Skokie Valley Asphalt was out of compliance  
22 with its 1986 NPDES permit? And I direct your  
23 attention to bullet point number 2.

24 A. There was no representative sampling

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1 point. You're talking on item number 2 on the

2 August 9 memo, right?

3 Q. Yes, sir.

4 A. Right.

5 Q. And what is a representative sampling  
6 point?

7 A. It is a point that's needed for the  
8 permittee to grab their samples and for the agency  
9 to grab samples too for confirmation to ensure that  
10 they're meeting the permit limits that were  
11 described in the NPDES permit.

12 Q. And the 1986 NPDES permit required  
13 them to have such a sampling point?

14 A. It required them to take  
15 representative samples.

16 Q. And to do that --

17 A. You need a representative sampling  
18 point.

19 Q. Okay. I'm going to direct your  
20 attention now to the June 4, 1991 memo that's an  
21 attachment to the August 9, 1991 memo. Can you tell  
22 me what that memo is about?

23 A. It was a compliance update to our  
24 field operations manager at the time.

1 Q. And specifically was it referenced in  
2 the May 21, 1991 inspection visit?

3 A. Yes.

4 Q. Can you describe what happened during  
5 that inspection visit?

6 MR. JAWGIEL: Your Honor, this has  
7 little or no relevance.

8 HEARING OFFICER SUDMAN: In what way?  
9 I think it's pretty relevant.

10 MR. JAWGIEL: All right. I'll  
11 withdraw the objection.

12 HEARING OFFICER SUDMAN: Okay.

13 MR. JAWGIEL: Let's see where it goes.

14 HEARING OFFICER SUDMAN: All right.  
15 Thank you.

16 THE WITNESS: The purpose of the  
17 inspection was twofold. It was to meet --  
18 some folks from the division of land  
19 pollution control were there to do a site  
20 assessment just as a general knowledge  
21 consulting thing for them.

22 I was also there to establish  
23 whether indeed Skokie Valley Asphalt had  
24 installed a representative monitoring point

1 to ensure NPDES monitoring.

2 BY MR. MURPHY:

3 Q. Did you meet anybody from Skokie  
4 Valley Asphalt during that inspection?

5 A. Yes, I met Richard Frederick and  
6 Edwin Frederick.

7 Q. Did you have a conversation with  
8 Richard Frederick and Larry Frederick about that?

9 A. Yes, I did.

10 Q. About why you were there?

11 A. Yes, I did.

12 Q. What happened in that conversation?

13 MR. JAWGIEL: I'm just going to object  
14 with regard to what happened in that  
15 conversation. If he wants to ask him what  
16 was said in that conversation, that's fine,  
17 but I think the form of the question is  
18 inappropriate.

19 HEARING OFFICER SUDMAN: Well, I think  
20 it's --I mean, I can understand what the  
21 meaning is. If you want to rephrase it, you  
22 can, otherwise, I think it's pretty clear.

23 MR. MURPHY: Sure. I'll be happy to.

24

1 BY MR. MURPHY:

2 Q. Who said what to whom in that  
3 conversation?

4 A. Well, I stated I was there mainly to  
5 establish whether they put in a sampling point in a  
6 manhole that connected their lagoon system to a  
7 tributary to Grayslake and there was some resistance  
8 and --

9 MR. JAWGIEL: I'm going to object.  
10 This witness is reading from the document.

11 HEARING OFFICER SUDMAN: Well, no,  
12 here, that's fine.

13 MR. JAWGIEL: If he needs to refresh  
14 his recollection -- this reading from the  
15 document serves no purpose.

16 THE WITNESS: Madam Hearing Officer, I  
17 wasn't reading from a document at that time.

18 HEARING OFFICER SUDMAN: Overruled.

19 Go ahead.

20 THE WITNESS: What had happened was  
21 some tempers flared and there was some  
22 hostility and I got the impression they  
23 wanted me to go, so I left just to avoid  
24 confrontation.

1 BY MR. MURPHY:

2 Q. Hostility on whose part?

3 A. On Richard and Edwin Frederick.

4 Q. So did the Frederick brothers show you  
5 an effluent sampling point when you showed up on  
6 that date?

7 A. Not on that day.

8 Q. So you were not able to see a sampling  
9 point on that day?

10 A. Not on that day.

11 Q. Directing your attention to Exhibit 20  
12 in the binder, will you take a moment to look  
13 through that, please.

14 (Witness perusing  
15 the document.)

16 A. Okay.

17 Q. Do you recognize that document?

18 A. Yes, I do.

19 Q. What is it?

20 A. It is a memo from myself,  
21 Chris Kallis, to Rick Pinio dated October 9, 1991  
22 concerning my comments on NPDES permit application.

23 Q. Who is Rick Pinio?

24 A. Rick Pinio is an employee of division

1 of water pollution control industrial permit  
2 section. His job is to write permits.

3 Q. So he's an Illinois EPA employee?

4 A. Yes, he is.

5 Q. Is this document used in the ordinary  
6 course of normal EPA business?

7 A. Yes.

8 Q. Is this document kept in the ordinary  
9 course of normal EPA business?

10 A. Yes.

11 Q. Is this a true and accurate copy of  
12 that memo?

13 A. Yes.

14 MR. MURPHY: Madam Hearing Officer,  
15 may I have a second?

16 HEARING OFFICER SUDMAN: Yes.

17 BY MR. MURPHY:

18 Q. Which permit did that memo refer to?

19 A. It referred to the NPDES application  
20 for renewal of permit from Skokie Valley Asphalt.

21 Q. What was the date of that permit  
22 application, if you remember?

23 A. That, I don't. I'm sorry.

24 Q. Okay. Would it have been sometime

1 around the date of that memo?

2 MR. JAWGIEL: Your Honor, I'm going to  
3 object. That asks for speculation. If he  
4 doesn't know the date, he won't know when it  
5 was.

6 HEARING OFFICER SUDMAN: You're asking  
7 him what the date was?

8 MR. MURPHY: If he knows -- he may not  
9 know the specific date but he may know that  
10 it was sometime around the memo or why else  
11 would he be doing the memo at that time?

12 MR. JAWGIEL: That's pure speculation.

13 MR. MURPHY: No. That's why I asked  
14 the question.

15 HEARING OFFICER SUDMAN: Well,  
16 overruled. I'll allow it.

17 THE WITNESS: I believe it was shortly  
18 before this memo.

19 BY MR. MURPHY:

20 Q. Mr. Kallis, while Skokie Valley  
21 Asphalt operated under the 1986 permit, did Skokie  
22 Valley Asphalt have a representative sampling point  
23 that was accessible?

24 A. Can you repeat that question? I'm

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1 sorry.

2 Q. Certainly.

3 While Skokie Valley Asphalt  
4 operated under the 1986 NPDES permit, did Skokie  
5 Valley Asphalt have a representative sampling point  
6 that was accessible?

7 A. No.

8 Q. Was Skokie Valley Asphalt ever  
9 permitted to discharge to Avon drainage ditch?

10 A. No.

11 Q. Did Skokie Valley Asphalt at all times  
12 comply with the 1986 NPDES permit in its discharge  
13 to Grayslake?

14 A. You're asking me if they complied with  
15 their discharge to Grayslake?

16 Q. Correct.

17 A. No.

18 Q. Does Avon drainage ditch discharge to  
19 Grayslake?

20 A. No.

21 Q. Where does it discharge?

22 A. Third Lake.

23 Q. Turning your attention to Exhibit  
24 No. 32, does that map indicate where Skokie

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1 Valley -- strike that.

2 Does that map indicate where Avon  
3 Fremont drainage ditch is?

4 A. Yes. It's that blue line that's just  
5 to the right of the site of Skokie Valley Asphalt.

6 Q. Where does that blue line run?

7 A. It flows north.

8 Q. It flows north through the Village of  
9 Grayslake?

10 A. Yes.

11 Q. Mr. Kallis, I want to direct your  
12 attention now to Exhibit No. 18 in the binder. Take  
13 a moment to look at that, please.

14 (Witness perusing  
15 the document.)

16 A. Yes. It's a complaint investigation  
17 dated March 5, 1987.

18 MR. JAWGIEL: Your Honor, I'm going to  
19 object to the relevance of this. The  
20 complaint doesn't start with any allegations  
21 against us in 1988.

22 HEARING OFFICER SUDMAN: Pardon me. I  
23 didn't hear you.

24 MR. JAWGIEL: The complaint doesn't

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1 start with any allegations against Skokie  
2 Valley until 1988. This is a 1987 complaint.  
3 The relevance of this is nonexistent.

4 HEARING OFFICER SUDMAN: Mr. Murphy?

5 MR. MURPHY: It is certainly relevant,  
6 Madam Hearing Officer, when you consider  
7 Section 33 of the Act and I'll read right  
8 from the Act. The character and degree of  
9 injury to -- Section 33(c)(i): The character  
10 and degree of injury to or interference with  
11 the protection of the health and general  
12 welfare and physical property of the people;  
13 (5): Any subsequent compliance.

14 These are things that the Board  
15 may consider in its orders and determination.

16 HEARING OFFICER SUDMAN: Okay. I'm  
17 going to overrule it.

18 MR. JAWGIEL: Your Honor, they have  
19 not read anything out of the Act that has any  
20 bearing on the memo that predates the

21 complaint. There's no relevance whatsoever  
22 and they haven't cited any sort of language  
23 in the Act that allows for it.

24 It has no relevance whatsoever and

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1 what they're trying to do is merely muddle  
2 the issues. The issues in the complaint have  
3 been laid out. They're presenting a memo  
4 that predates it that has nothing to do with  
5 the allegations in the complaint and now  
6 they're trying to basically muddy the waters.

7 MR. MURPHY: I can show this memo is  
8 relevant, one, because it relates to the  
9 issue of corporate officer liability and it  
10 also relates to the issue of why he was going  
11 out to the site in the first place and why  
12 they were required to get an NPDES permit.

13 HEARING OFFICER SUDMAN: Okay. I'm  
14 going to allow it.

15 BY MR. MURPHY:

16 Q. Did you prepare that report?

17 A. Yes.

18 Q. When did you prepare it?

19 A. I prepared it sometime after

20 March 5, but before March 10.

21 Q. Okay. So shortly after you made the  
22 inspection?

23 A. Right.

24 Q. Is that document used in the ordinary

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1 course of Illinois EPA business?

2 A. It was at the time. We don't  
3 handwrite inspection reports now.

4 Q. Is that document kept in the ordinary  
5 course of Illinois EPA business?

6 A. Yes.

7 Q. Is that a true and accurate copy of  
8 that report?

9 A. Yes.

10 Q. Mr. Kallis, what did you observe  
11 during your March 3, '87 inspection?

12 A. We had a complaint of oil and grease,  
13 just an oily residue in Avon drainage ditch and we  
14 traced it to a pump-out -- when I say we, I mean me  
15 representing the agency -- from their two-cell  
16 lagoon.

17 Q. What kind of pump-out, can you  
18 describe that, please?

19           A.       It was done with a portable pump with  
20 an elongated hose.

21           Q.       Where was the hose hooked up to and  
22 where did it discharge to?

23           A.       It was hooked up to their second cell  
24 and it lead to the southeast part of their property.

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1           Q.       What are you referring to when you say  
2 cell?

3           A.       I'm referring to a manhole that is  
4 located kind of southeast of their property. It's  
5 on the drawing on the second page.

6           Q.       Okay. And that was the discharge  
7 point?

8           A.       Yes.

9           Q.       My question is where was the line  
10 drawing its discharge from?

11          A.       The two-cell lagoon.

12          Q.       The second cell, two-cell lagoon?

13          A.       Right, which are pictured on photo  
14 three.

15          Q.       Attached to that report?

16          A.       Yes.

17          Q.       Previously you referred to storm water

18 retention ponds. Are these cells the same thing as  
19 the storm water retention ponds?

20 A. That is correct.

21 Q. Who is this "they" that you're saying  
22 was discharging this material, this liquid from the  
23 storm water pond to the manhole?

24 A. Skokie Valley Asphalt.

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1 Q. Did they have a permit to do that?

2 A. No.

3 Q. Was that covered by their 1986 NPDES  
4 permit?

5 A. No.

6 Q. Where did the manhole discharge to?

7 A. The manhole discharged -- lead to a  
8 tile and discharged out of the tile to Avon drainage  
9 ditch.

10 Q. Did the 1987 NPDES permit cover  
11 discharges or allow discharges to the Avon drainage  
12 ditch?

13 A. No, it didn't.

14 Q. Mr. Kallis, I'm going to direct your  
15 attention to Exhibit No. 21 in the binder. Can you  
16 please take a moment to look through that?

17 (Witness perusing  
18 the document.)

19 A. Well, there's a lab sheet for my  
20 request for a sampling of oil and grease and the  
21 results attached, and there's also results for  
22 organics and pesticide sample that was collected.

23 Q. Okay. Let's break this down a little  
24 bit. You say samples were collected. What samples

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1 are you referring to?

2 A. Samples for oil and grease and samples  
3 for organics and pesticide.

4 Q. Collected where?

5 A. At a discharge tile to Avon drainage  
6 ditch.

7 Q. Okay. We'll come back to that in a  
8 moment. But did you collect those samples?

9 A. Yes.

10 Q. When did you collect them?

11 A. I collected them on the morning of  
12 March 1, 1995.

13 Q. Why did you collect those samples?

14 A. In response to an ongoing  
15 investigation as to the source of contaminants,

16 obvious contaminants, that were discharged into the  
17 Avon drainage ditch.

18 MR. JAWGIEL: Your Honor, I'm going  
19 to object to the relevance of this whole line  
20 of questioning. There's no relevance  
21 whatsoever at this point in time. There's no  
22 enforcement action that has been established  
23 regarding both this inspection report and the  
24 prior ones from 1987. It has no relevance in

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1 this case.

2 HEARING OFFICER SUDMAN: Your  
3 objection is noted, but I'm going to allow  
4 it. I think it's relevant.

5 BY MR. MURPHY:

6 Q. What did you do when you first went  
7 out to the Avon drainage ditch that day?

8 A. I believe I parked my car over by the  
9 railroad station. I had a hand-held cooler which  
10 was able to hold a bottle for organics and a bottle  
11 for oils and grease and I walked along the ditch up  
12 to the tile, took out the bottles, took the sample.  
13 I did use latex gloves just as protection.

14 I marked the bottles -- actually,

15 I marked them before I even took the sample with the  
16 marker, put them back in the cooler, transported  
17 them back to the office.

18 Q. Where exactly did you collect the  
19 samples?

20 A. From a farm tile discharge at the Avon  
21 drainage ditch.

22 Q. Okay. Now, where is that -- switching  
23 gears now for a moment to Exhibit No. 32, which is  
24 the map you looked at previously. Can you describe

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1 for the Board where that farm tile is as it connects  
2 to Avon drainage ditch on this map?

3 A. It's approximately maybe a little  
4 north of where the two Ps, an approximate.

5 Q. Okay. So the map has a designation of  
6 the approximate location of the subject property?

7 A. Right.

8 Q. And you're saying that the farm tile  
9 was located just north of where those two Ps appear  
10 on that map?

11 A. To the best of my recollection, yes.

12 Q. What did you observe when you  
13 collected the sample?

14           A.       I observed a heavy oil sheen and a  
15 heavy oily substance discharging from the farm tile  
16 and it was causing an oil sheen, very concentrated.

17           Q.       What did the water upstream from the  
18 farm tile in the Avon drainage ditch look like?

19           A.       It was either partially frozen or  
20 mildly turbid. I did not see any sign of oil or  
21 grease or any contaminants so to speak upstream.

22           Q.       But you did see -- strike that.

23                         What did you see downstream from  
24 the farm tile?

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1           A.       A heavy oil sheen.

2           Q.       What did you see coming out of the  
3 farm tile?

4           A.       A heavy oily substance even more  
5 concentrated than in the creek.

6           Q.       Can you please turn to the page of the  
7 sampling report where it says oil gravimetric.

8                         MR. JAWGIEL: I'm sorry. Where are  
9 you referring?

10                        MR. MURPHY: Back on Exhibit 21.

11                        MR. JAWGIEL: Thank you.

12 BY MR. MURPHY:

13 Q. Can you explain what oil gravimetric  
14 means?

15 A. It's a -- well, gravimetric is, as I  
16 understand it, the way the analysis is done. It's  
17 how they determine the concentration of oil and  
18 grease in that sample.

19 Q. Okay. After you collected the  
20 samples, did you send them out for analysis?

21 A. Yes.

22 Q. Did you get the sample analysis back?

23 A. Yes.

24 Q. What were the results?

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1 A. The concentrations of oil gravimetric  
2 was 664 milligrams per liter.

3 Q. Thank you.

4 Getting back now to your  
5 observations when you collected the samples, the  
6 observations you made at Avon drainage ditch, you  
7 mentioned certain things that you saw. Did you  
8 notice any smells?

9 A. I did note a petroleum-based smell.

10 Q. Where?

11 A. Near the farm tile.

12 Q. Would you associate that with what was  
13 coming out of the farm tile?

14 A. Yes, I did.

15 Q. Okay. Is the sampling report a  
16 document used in the ordinary course of Illinois EPA  
17 business? I'm referring to Exhibit 21.

18 A. Yes.

19 Q. Is Exhibit 21 kept in the ordinary  
20 course of Illinois EPA business?

21 A. Yes.

22 Q. Is that a true and accurate copy of  
23 the sampling report?

24 A. Yes.

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1 Q. Thank you.

2 A. The only thing I might say that  
3 doesn't appear to be here is the cover sheet where I  
4 requested the organics.

5 Q. But everything else was true and  
6 accurate?

7 A. Right.

8 Q. Okay. Mr. Kallis, I'd like to direct  
9 your attention to Exhibit No. 22 in the binder.  
10 Please take a moment to look through that document.

11           A.       Yes.  It's a legal support inspection  
12   dated March -- well, no, not dated.  It's a legal  
13   support inspection.  The inspection occurred on  
14   March 22, 1995.

15           Q.       So that report documents the  
16   inspection that occurred on March 22,  
17   '95?

18           A.       Yes.

19           Q.       Did you sign this memo?

20           A.       Yes, I did.

21           Q.       You also prepared this memo?

22           A.       Yes.

23           Q.       Is this a document used in the  
24   ordinary course of normal EPA business?

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1           A.       Yes, it is.

2           Q.       Is it a document kept in the ordinary  
3   course of EPA business?

4           A.       Yes.

5           Q.       Is that a true and accurate copy of  
6   that report?

7           A.       Yes.

8           Q.       Okay.  Now, with respect to the  
9   inspection you conducted on March 22, 1995, did you

10 talk to anyone on behalf of Skokie Valley Asphalt  
11 during your visit that day?

12 A. Yes. I talked to Richard Frederick.

13 Q. Okay. What did Mr. Frederick tell you  
14 and what -- strike that.

15 What did you say to him and what  
16 did he say to you?

17 A. Well, we walked all over the property.  
18 We looked into that manhole that at one time they  
19 did pump into, and we walked through the property  
20 and there did not appear to be any overt  
21 contamination.

22 Q. You mentioned the manhole. Did  
23 Mr. Frederick tell you where that manhole discharged  
24 to?

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1 A. No.

2 Q. Did Mr. Frederick say anything to you  
3 about underground storage tanks on the Skokie Valley  
4 Asphalt property?

5 A. I asked them if there were any and at  
6 the time he said no.

7 Q. Why did you ask Mr. Frederick -- or  
8 Richard Frederick if there were underground storage

9 tanks on the Skokie Valley Asphalt property?

10 A. An employee of the Lake County Health  
11 Department had communicated to me that there were.

12 Q. Were there any other reasons why you  
13 would suspect there to be an underground storage  
14 tank on that property?

15 A. Just from the nature of the kind of  
16 business they have and -- yeah.

17 Q. Okay. Did you observe anything about  
18 contaminated water on that day?

19 A. Yes. I did note and I do remember  
20 that the discharge was still occurring at the Avon  
21 drainage ditch. One update that did occur is that  
22 the Grayslake Fire Department did put in some booms  
23 in the creek downstream.

24 Q. What are booms?

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1 A. Booms are, again, sort of an oil  
2 separator, only a portable one. They are installed  
3 to absorb oil that's moving on the surface.

4 Q. Did you again observe oil in the Avon  
5 drainage ditch?

6 A. Yes.

7 Q. Was that coming again from the farm

8 tile?

9 A. Yes.

10 Q. What is the purpose of absorbing booms  
11 used in that fashion?

12 A. Again, to collect oil that's flowing  
13 in a ditch.

14 Q. Prior to it flowing anywhere else?

15 A. Right.

16 Q. Okay. Mr. Kallis, I'd like to direct  
17 your attention to tab 23 in the binder. Take a  
18 moment to look through that document.

19 (Witness perusing  
20 the document.)

21 A. Okay. There was a memo to  
22 Chuck Gunnarson of the division of legal  
23 counsel from myself dated May 12, 1995.

24 Q. Chuck Gunnarson is another EPA

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1 employee?

2 A. Yes. He's employed with the division  
3 of local counsel.

4 Q. Is this document used in the ordinary  
5 course of Illinois EPA business?

6 A. Yes.

7 Q. Is this document kept in the ordinary  
8 course of Illinois EPA business?

9 A. Yes.

10 Q. Is this a true and accurate copy of  
11 that report?

12 A. Yes.

13 Q. Okay. Turning your attention now to  
14 tab 24 in the binder, take a moment to go through  
15 that document.

16 (Witness perusing  
17 the document.)

18 A. Okay. Yes, it was a legal support  
19 inspection dated December 5, 1995 by myself.

20 Q. The inspection was dated December 5,  
21 '97?

22 A. That's when the inspection was  
23 conducted.

24 Q. Does this report memorialize your

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1 observations from that inspection?

2 A. In the facility site review, that's  
3 correct.

4 Q. Okay. Is this document used in the  
5 ordinary course of Illinois EPA business?

6 A. Yes.

7 Q. Is this a document kept in the  
8 ordinary course of Illinois EPA business?

9 A. Yes.

10 Q. Is this a true and accurate copy of  
11 that report?

12 A. Yes.

13 Q. Okay. Now, was Skokie Valley Asphalt  
14 still discharging to waters of the State in 1997?

15 MR. JAWGIEL: I'm going to object to  
16 the foundation, your Honor.

17 THE WITNESS: Yes.

18 HEARING OFFICER SUDMAN: Overruled.

19 BY MR. MURPHY:

20 Q. Your answer was yes?

21 A. Yes. Sorry.

22 Q. Did Skokie Valley Asphalt have an  
23 NPDES permit to do so at the time?

24 A. No, it didn't.

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1 MR. MURPHY: Madam Hearing Officer,  
2 may I have a moment?

3 HEARING OFFICER SUDMAN: Yes.

4 (Brief pause.)

5 MR. MURPHY: Madam Hearing Officer, at  
6 this time I have no more questions.

7 HEARING OFFICER SUDMAN: Thank you.

8 Let's go off the record for just a  
9 moment.

10 THE REPORTER: Sure.

11 (Whereupon, a discussion  
12 was had off the record.)

13 HEARING OFFICER SUDMAN: Okay. We're  
14 back on the record just to say that we will  
15 be taking a lunch hour. We will restart at  
16 1:15. It is now 12:15, so please be back in  
17 one hour.

18 MR. JAWGIEL: If I may also just  
19 state that we did state that we will ask  
20 Mr. Kallis some questions, but we are  
21 reserving our right to call him in our case  
22 in chief pursuant to our 237 notice.

23 HEARING OFFICER SUDMAN: Okay. Thank  
24 you.

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1 (At 12:15 p.m. a  
2 luncheon recess was taken to  
3 1:15 p.m.)

4 HEARING OFFICER SUDMAN: We'll go back  
5 on the record; it is 1:15. We are back from  
6 lunch.

7 Mr. Kallis, you may please take  
8 the witness stand again, and I will remind  
9 you that you are still under oath.

10 Mr. Jawgiel, your witness, please.

11 MR. JAWGIEL: Thank you.

12 Just so the record is clear, we  
13 may dive into some areas that we objected to  
14 for our motion in limine. I'm not waiving  
15 those objections. Given the ruling of the  
16 hearing officer, I think I'm obligated to go  
17 into those subject matters.

18 HEARING OFFICER SUDMAN: Okay.

19

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1 AFTERNOON SESSION

2 CHRIS KALLIS,

3 called as a witness herein, having been previously  
4 duly sworn, was examined and further testified as  
5 follows:

6 C R O S S - E X A M I N A T I O N

7 BY MR. JAWGIEL:

8 Q. Good afternoon, sir.

9 Mr. Kallis, you had mentioned one  
10 incident when you experienced some hostility in  
11 going out to the site together and sampling and was  
12 unable to do so at some point in time and I've  
13 looked through your reports and I don't see any  
14 other notations regarding that. Was that a single  
15 incident?

16 A. It was a single incident.

17 Q. And how many times had you been out to  
18 the facility, the Skokie Valley Asphalt facility --  
19 if I use Skokie Valley, you understand what we're  
20 talking about -- since that incident when there was  
21 hostility?

22 A. There's been none.

23 Q. How many times had you been out there  
24 three, four, five times since that incident?

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1 A. I believe even more than that and I

2 had not experienced hostility.

3 Q. And you've taken samples during those  
4 other visits, have you not?

5 A. At times.

6 Q. At any point in time when you went out  
7 to the actual property of Skokie Valley, did you  
8 ever have a warrant?

9 A. No.

10 MR. MURPHY: Objection, relevance.

11 HEARING OFFICER SUDMAN: I'll allow  
12 it.

13 THE WITNESS: No, sir, I haven't.

14 BY MR. JAWGIEL:

15 Q. Now, do you have a big book in front  
16 of you?

17 A. Yes, I do.

18 Q. Now, just so we have an understanding,  
19 you realize that in the area where Skokie Valley was  
20 located there were other properties that were not  
21 Skokie Valley; is that correct?

22 A. They are surrounded by other  
23 properties, that's correct.

24 Q. There's actually a farm that is in

1 between Skokie Valley property and the Avon drainage  
2 ditch; is that correct?

3 A. That's correct.

4 Q. And that's an active farm, if you  
5 will?

6 A. The last I visited there, they were  
7 farming on it.

8 Q. Okay. And there's also -- I believe  
9 there's railroad tracks that run between the Skokie  
10 Valley property and the Avon drainage ditch as well;  
11 is that correct?

12 A. Between?

13 Q. Well, somewhere in that vicinity; is  
14 that correct?

15 A. There are railroad tracks, but if  
16 you're asking me of the railroad tracks between  
17 where the tile was and the facility, I would say no.  
18 But yes, there are railroad tracks there.

19 Q. And is there a car dealership -- in  
20 the general vicinity of this within, let's say, a  
21 two-mile radius of Skokie Valley, is there a car  
22 dealership in that area?

23 A. Yes. There's a car dealership on  
24 Route 120, which is to the north of Skokie Valley

1 Asphalt. The last I saw there was one there.

2 Q. Okay. And what other types of  
3 entities or businesses or anything are within this  
4 two-mile radius of Skokie Valley?

5 A. Two miles extends into downtown, so  
6 there's all sorts of retail businesses and diners  
7 there and things like that.

8 Q. Okay. I think you had indicated that  
9 the first time that you had noticed any discharge  
10 out of the farm tile was when you were out there  
11 when?

12 A. The first time that I ever observed a  
13 discharge from the farm tile, that I ever actually  
14 looked into a discharge of the farm tile was in that  
15 1987 incident.

16 Q. Okay, the 1987 incident.

17 Now, with respect to the 1987  
18 incident, was there any prosecution from that?

19 A. No.

20 Q. Did you recommend any prosecution?

21 MR. MURPHY: Objection. Madam Hearing  
22 Officer, this witness -- there's been no  
23 foundation that this witness has anything to  
24 do with recommendations made to the Illinois

1 EPA or the Attorney General's Office about  
2 whether -- the filing of prosecution against  
3 potential defendants. It's outside the  
4 scope; it's not relevant either.

5 MR. JAWGIEL: The scope of his duties  
6 would have been established by direct  
7 examination and it was very loose. So  
8 essentially it was very loose, so the door is  
9 open to allow me to ask him these questions.

10 HEARING OFFICER SUDMAN: You're asking  
11 him if he recommended it?

12 MR. JAWGIEL: Right.

13 HEARING OFFICER SUDMAN: I'll allow  
14 it.

15 THE WITNESS: I recommended a  
16 compliance inquiry letter of some type if my  
17 memory serves me correctly.

18 BY MR. JAWGIEL:

19 Q. Okay. And was there compliance?

20 A. Yeah, I think there was.

21 Q. How long after you first recognized  
22 that there was this oily substance back in 1987?

23 MR. MURPHY: Madam Hearing Officer, I  
24 thought I heard him say was there

1 compliance -- or I didn't understand the  
2 question. Can I have him repeat the  
3 question, please?

4 HEARING OFFICER SUDMAN: Would you  
5 please repeat the question?

6 MR. JAWGIEL: Sure.

7 BY MR. JAWGIEL:

8 Q. Was there compliance by Skokie Valley  
9 back in 1987 with respect to the compliance letter  
10 that you recommended?

11 A. I don't understand your question. I'm  
12 sorry.

13 HEARING OFFICER SUDMAN: I don't  
14 either. Are you asking was there a compliance  
15 letter?

16 MR. JAWGIEL: No.

17 BY MR. JAWGIEL:

18 Q. You had indicated that a compliance  
19 letter was something you recommended, is that  
20 correct, after you realized what happened in 1987?

21 MR. MURPHY: Well, now I have a  
22 different objection. There still has been no  
23 foundation that one was actually sent based  
24 on the recommendation.

1 HEARING OFFICER SUDMAN: Well, that's  
2 true. I didn't get that leap either. Do you  
3 want to go back a little?

4 BY MR. JAWGIEL:

5 Q. Well, was there a compliance letter  
6 sent with respect to the incident back in 1987?

7 A. To the best of my recollection, I  
8 think was, yes.

9 Q. Okay. Now, was there compliance with  
10 that letter by Skokie Valley back in 1987?

11 A. Sir, are you asking me that after that  
12 incident did a similar incident take place?

13 Q. No. I'm asking you that after that  
14 incident in 1987 after the compliance letter that  
15 you believe was sent out was sent out whether or not  
16 Skokie Valley complied with the recommendations of  
17 the letter in your opinion?

18 A. Well, a compliance inquiry letter -- a  
19 compliance inquiry letter, what it does is asks --  
20 we don't send those out anymore. We send out  
21 violation notices, but it serves the same purpose.  
22 It gave them a notice that they were in violations  
23 that day and what they're going to do to remedy that  
24 in the future and --

1 MR. JAWGIEL: I would ask that his  
2 answer be struck as nonresponsive.

3 HEARING OFFICER SUDMAN: Mr. Kallis --

4 HEARING OFFICER SUDMAN: I'm sorry.

5 MR. MURPHY: He did respond.

6 THE WITNESS: I'm sorry --

7 HEARING OFFICER SUDMAN: That's okay.

8 I realize you're giving a lot of background  
9 information but he really didn't ask for it,  
10 so would you please repeat the question that  
11 you did ask?

12 MR. JAWGIEL: I don't quite remember.

13 If I could have it read back --

14 HEARING OFFICER SUDMAN: Would the  
15 court reporter please read it back?

16 (Whereupon, the requested  
17 portion of the record  
18 was read accordingly.)

19 THE WITNESS: Since I don't have the  
20 letter in front of me, I don't think I can  
21 answer that. I'm sorry.

22 HEARING OFFICER SUDMAN: That's okay.

23 If you don't know, just say you don't know.

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1 BY MR. JAWGIEL:

2 Q. Well, let me ask you this question:  
3 What month was it that you first noticed this  
4 incident in 1987?

5 A. I noticed it two days after the  
6 complaint. I think it was in March. I had my  
7 note --

8 Q. Okay. Did you go out there in April  
9 of 1987 to find out if there was still a discharge  
10 that you recognized in March of 1987?

11 A. I don't remember if there was a field  
12 follow-up right after that.

13 Q. Okay. So you did nothing to follow-up  
14 with respect to the discharge in 1987 as you sit  
15 here today?

16 MR. MURPHY: Objection, misconstrues  
17 the prior testimony. He says he doesn't  
18 remember.

19 MR. JAWGIEL: It's cross-examination,  
20 your Honor. I'm giving a lot of latitude.

21 HEARING OFFICER SUDMAN: That's true.  
22 I'll allow it.

23 THE WITNESS: Repeat.

24 MR. JAWGIEL: Sure.

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1 BY MR. JAWGIEL:

2 Q. Is it fair to say that you did no  
3 follow-up whatsoever with respect to the discharge  
4 that you identified in March of 1987?

5 A. No, because I recommended to our  
6 regional manager that a compliance inquiry letter be  
7 written.

8 Q. Okay. Beyond the recommendation of a  
9 compliance letter, did you do any other follow-up  
10 with respect to the March 1987 discharge as you  
11 identified?

12 A. I don't remember.

13 Q. Mr. Kallis, we talked a little bit  
14 about your educational background. Do you have a  
15 degree in chemistry?

16 A. No, sir.

17 Q. Have you ever conducted a chemical  
18 analysis test of any samples that you have taken?

19 MR. MURPHY: Madam Hearing Officer, I  
20 have an objection on the grounds of  
21 relevancy. I'll have a standing objection to

22           this line of questioning.

23                       HEARING OFFICER SUDMAN: Okay.

24                       MR. JAWGIEL: It goes to his

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1           qualifications.

2                       HEARING OFFICER SUDMAN: And it also  
3 goes to evidence on the motions that he  
4 filed, so I'm going to allow it.

5                       THE WITNESS: I've done field analyses  
6 for dissolved oxygen using a kit and acid  
7 bottles, I've done that. Other than that,  
8 using hot kits for determining pH, no.

9 BY MR. JAWGIEL:

10           Q.       Okay. So with respect to the reports  
11 that we see -- the various chemical analysis reports  
12 we see attached to your memos, you don't know  
13 whether or not that information is accurate or not;  
14 is that correct?

15           A.       Are you talking about the analysis,  
16 the samples I took from Skokie Valley Asphalt?

17           Q.       The analysis you took from the Avon  
18 drainage ditch -- from the farm tile. There was an  
19 analysis that was done to that sample, but you don't  
20 know whether or not those analyses values are

21 accurate or not, do you?

22 A. No.

23 Q. I want to refer you to Exhibit 22.

24 Take a look at Exhibit 22 and in particular I'm

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1 going to refer you to your summary of findings.

2 Now, was it your opinion as you wrote here that the

3 present contamination in the Avon drainage ditch is

4 pure speculation?

5 A. At that time, yes.

6 Q. And that your best guess is that the

7 contamination is historical?

8 A. I did write that, yes.

9 Q. And when you said historical, you were

10 talking about that in 1988, there was a closure of

11 that particular tile; is that correct?

12 A. Yes.

13 Q. Did you take any samples of any

14 material whatsoever that were on the Skokie Valley

15 site in March of 1995 or after to analyze them to

16 compare it to what was in the Avon drainage ditch?

17 A. No, sir.

18 Q. At no point in time are you aware of

19 anyone analyzing any materials that were present on

20 the Skokie Valley site at the time that there was  
21 this discharge from the farm tile into the Avon  
22 drainage ditch; isn't that correct?

23 A. That's correct.

24 Q. Nobody as far as you're aware did a

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1 chemical analysis in order to determine whether or  
2 not the materials that were present on the Skokie  
3 Valley site contemporaneous to what was going on in  
4 the Avon drainage ditch in 1995 regarding this  
5 discharge would be the same types of material; is  
6 that correct?

7 A. That was a long question. Can you  
8 repeat it?

9 Q. Sure and maybe I can shorten it.

10 You're not aware of anybody or any  
11 entity taking a sample from the Skokie Valley site  
12 as it existed at the time of this discharge into the  
13 Avon drainage ditch in 1995 in order to compare the  
14 materials that were on the site to what was in the  
15 ditch?

16 A. That's correct.

17 Q. Sir, isn't it true that you are aware  
18 that other drain tiles may contribute into this farm

19 tile where this discharge was coming from; is that  
20 correct?

21 A. That's true.

22 Q. And you're not quite sure what other  
23 contributories there may be into this drain tile  
24 because you never looked into what those

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1 contributory tiles may be; is that correct?

2 A. I tried looking into it but it's very  
3 difficult.

4 Q. So as you sit here today, you don't  
5 know whether or not what you pulled out of the farm  
6 tile back in March of 1995 was actually some  
7 material that came from Skokie Valley, isn't that  
8 correct, other than -- it could come from other  
9 sources as well?

10 A. It's technically possible. That's  
11 correct.

12 Q. Did you go to the car dealership  
13 that's in this area to determine whether or not  
14 there may have been an oily discharge in its manhole  
15 cover?

16 A. No.

17 Q. Did you go to the farm and see if

18 there was oily discharge in the farm's manhole cover  
19 at the time that you were out in Skokie Valley in  
20 March of 1995?

21 A. Yes.

22 Q. Did you find anything?

23 A. No.

24 Q. And as you already said, you went to

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1 Skokie Valley, looked at their manhole, and you  
2 didn't see anything that was consistent to what was  
3 in the Avon Creek; is that correct?

4 A. That's correct.

5 Q. Did you take any soil borings of the  
6 land on the Skokie Valley site to its border to  
7 determine whether or not there may have been oil  
8 that leached out of this drain tile into the soil?

9 A. No, sir.

10 Q. Now, with respect to oily products,  
11 you've been using the term oil. With respect to  
12 what you saw in March of 1995 coming out of this  
13 drain tile, you don't know whether it was motor oil,  
14 do you, sir?

15 A. Not by what I saw.

16 Q. You don't know whether or not it was

17 gasoline or a gasoline-based product, do you, sir?

18 A. The samples that I took out of the  
19 tile, I did take organics and it came up with  
20 organics that you could associate with  
21 petroleum-related substances.

22 Q. Okay. Petroleum related substances  
23 could be fertilizer, isn't that correct? It's a  
24 petroleum-based substance, isn't it?

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1 A. Some are.

2 Q. It could be motor oil? That's a  
3 petroleum base?

4 A. Yes.

5 Q. It could be diesel fuel; is that  
6 correct?

7 A. That's correct.

8 Q. It could be heating oil; is that  
9 correct?

10 A. Yes.

11 Q. It could be some household products  
12 that have oil -- or petroleum-based solvents in  
13 them?

14 A. That's correct.

15 Q. And as we sit here today, you can't

16 tell us which product actually was present in that  
17 sample among those list of products; isn't that  
18 correct?

19 A. I can only tell you what organics were  
20 found in the analysis that was given to me.

21 Q. But that's not my question, sir.

22 You can't tell me whether it was  
23 gasoline or a gasoline-based product or oil for a  
24 motor, for a car or truck or whatever the case may

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1 be, diesel fuel or any other products we just  
2 listed, correct?

3 A. That's correct.

4 Q. Has it been your experience, sir, that  
5 when you put -- well, let's take a step back.

6 We keep talking about this drain  
7 tile. A drain tile was made out of what, was it  
8 made out of ceramic, was it made out of metal, was  
9 it made out of both? What was your understanding of  
10 the farm drain tile that you took this substance out  
11 of?

12 A. I don't know all of the -- I know some  
13 of it was made out of metal.

14 Q. Okay. The part that you could see

15 coming out of the ground was made out of metal; is  
16 that correct?

17 A. Yes.

18 Q. Has it been your experience that after  
19 you have this external metal that's generally the  
20 part that's under the ground is made out of some  
21 sort of ceramic or terra-cotta material?

22 A. Tile, yes, sometimes.

23 Q. Okay. Now, has it been your  
24 experience, sir, that when you put an oily substance

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1 in a terra-cotta or clay type of tile, that has a  
2 tendency of leaking out because it's a porous  
3 material?

4 A. I haven't had too much experience but  
5 I know what you're saying.

6 Q. Well, it can, can it not?

7 A. I'm not sure on that one. I'm sorry.

8 Q. Okay. Isn't it true, sir, you have no  
9 information that Larry Frederick put the oil into  
10 the drain tile that eventually went out into the  
11 Avon drainage ditch?

12 A. I have no information that Larry  
13 Frederick put oil into the drainage ditch.

14 Q. You have no information that anyone at  
15 Larry Frederick's direction did so either; isn't  
16 that correct?

17 A. That's correct.

18 Q. You have no information whatsoever  
19 that Richard Frederick actually put the substance  
20 that you collected out of the farm tile in March of  
21 1995?

22 A. That's correct.

23 Q. You have no information whatsoever  
24 that anyone under Richard Frederick's authority

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1 placed the oily substance that you identified in  
2 March of 1995 into the farm tile; is that correct?

3 A. That's correct.

4 Q. You have no information that would  
5 lead you to believe that anyone from Skokie Valley,  
6 any of their employees, actually placed the  
7 substance that was in the drain tile that you  
8 collected in March of 1995; is that correct?

9 A. That's correct.

10 Q. I want to refer you to Exhibit 23.  
11 It's your memo dated May 12, 1995. Do you have that  
12 before you, sir?

13 A. Yes, the May 12, 1995 memo.

14 Q. Okay. Now, in the second full  
15 paragraph we see that you referred to a report by a  
16 Betty Lavis from the USEPA and it's attached to this  
17 document, isn't that correct, when you drafted it  
18 because you indicate attached is a report by  
19 Betty Lavis? It was your intention to attach it; is  
20 that correct?

21 A. Yes.

22 Q. Now, Exhibit 24 doesn't contain the  
23 attachment, does it, sir?

24 A. No, it doesn't.

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1 Q. Okay. But if we look at Exhibit 25,  
2 which the State didn't present to you -- take a look  
3 at it.

4 A. Yes.

5 Q. Exhibit 25 is that memo from  
6 Betty Lavis that you refer to in your report, which  
7 is Exhibit 23; is that correct?

8 A. I believe so, yes.

9 Q. So an accurate representation of  
10 Exhibit 23 would be including the attachment of  
11 Exhibit 25, isn't that correct, to make sure that

12 the document is complete and accurate, right?

13 A. That's a legal determination. I'm not  
14 sure I know where you're coming from.

15 Q. Well, when you submitted your report  
16 in --

17 A. '95, I know.

18 Q. -- May 12 of '95, you attached  
19 Ms. Lavis' report to it as a supporting document to  
20 what you wrote in your memo?

21 A. Yes, I did.

22 Q. And you relied upon what you saw in  
23 Betty Lavis' report for the basis of your opinions  
24 that we see here?

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1 A. Yes, sir.

2 Q. And that memo along with your memo --  
3 when I say that memo, I'm talking about  
4 Betty Lavis' memo -- and your memo were kept in the  
5 ordinary course of business, were they not?

6 A. Yes, as an attachment to that memo.

7 Q. Right. And as we've already  
8 established, as an attachment to that memo, that  
9 type of document at the Illinois EPA would have been  
10 kept in the ordinary course of business as an

11 attachment to your memo; isn't that correct?

12 A. Yes.

13 Q. And what we see in Exhibit 25 is  
14 actually a true and accurate copy of the attachment  
15 that you attached to your memo of May 12, 1995?

16 A. You got it.

17 Q. Okay. Now, you used Betty Lavis'  
18 report as a basis for your conclusion that this oily  
19 substance, which we don't know what it is, came from  
20 the Skokie Valley site; is that correct?

21 A. Yes, sir. I believe that's correct.

22 Q. Do you see anywhere in her report  
23 where she makes the statement that this substance  
24 definitively came from the Skokie Valley site?

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1 A. No.

2 Q. So it was your interpretation of what  
3 Ms. Lavis wrote that the oily substance came from  
4 the Skokie Valley site; isn't that correct?

5 A. That's correct.

6 Q. But that was your interpretation  
7 without any additional testing, without any soil  
8 borings, without taking sampling from the Skokie  
9 Valley site, without doing anything else; is that

10 correct?

11 A. That's correct.

12 Q. And did you find the reports and the  
13 memorandum of Betty Lavis to be reliable documents  
14 for basing your opinion regarding what was going on  
15 in the Skokie Valley site at the time of this  
16 discharge into the Avon drainage ditch? I'm talking  
17 about the discharge in 1995.

18 MR. MURPHY: Your Honor, I object.

19 I'm not sure I understand the question; it  
20 was a long one.

21 HEARING OFFICER SUDMAN: Are you  
22 asking if he relied on the Lavis memo?

23 MR. JAWGIEL: What I'm asking him is  
24 something a little bit more specific. What

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1 I'm asking him is in his opinion, are these  
2 types of documents from the USEPA and  
3 Betty Lavis reliable sources of information  
4 to rely on to base his opinion.

5 HEARING OFFICER SUDMAN: Okay.

6 THE WITNESS: I considered it so.

7 BY MR. JAWGIEL:

8 Q. Towards the end of your direct

9 testimony, you identified a memo, which I believe  
10 was December 5, 1997 and it's  
11 Exhibit 24 -- if I can refer you to that exhibit --

12 A. You're talking about the legal support  
13 inspection, correct?

14 Q. Field support inspection, yeah.

15 Now, let's just get a little  
16 understanding of why you did this legal support  
17 inspection. Was this done in order to determine  
18 whether or not an NPDES permit would be issued to  
19 Skokie Valley?

20 A. No, sir.

21 Q. When you referred to that there was a  
22 discharge in this December 1997 report, were you  
23 talking about discharge of storm water? What  
24 contaminants are you talking about that you claim

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1 Skokie Valley was putting into the Avon drainage  
2 ditch in this particular period of time that formed  
3 the basis of the  
4 December 5, 1997 inspection report?

5 A. Well, the basis of this report was,  
6 one, an explanation of the NPDES permit status; two,  
7 the history; three, the facility site review of what

8 I saw that day and then four, a summary of findings.

9 Q. Okay. I thought you had given the  
10 opinion on direct examination that based on this  
11 report, it was your opinion that Skokie Valley was  
12 continuing to discharge material into the Avon  
13 drainage ditch, is that a correct characterization  
14 of your testimony?

15 A. I don't think so.

16 Q. Okay. So in your opinion, when did  
17 Skokie Valley stop discharging materials prior to  
18 December 5, 1997 into the Avon drainage ditch?

19 A. To the best of my knowledge, it was  
20 soon after Mr. Huff was hired.

21 Q. Okay. So that would be back in 1995?

22 A. Yes.

23 Q. And you're not aware of any problems  
24 with respect to Skokie Valley discharging material

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1 into the Avon drainage ditch since 1995; isn't that  
2 correct?

3 A. The Avon drainage ditch, that's  
4 correct.

5 Q. Are you aware of Skokie Valley --  
6 well, let me just take a step back. Strike that

7 question, please. Let me take a step back.

8                               You had indicated that the report,  
9 which is Exhibit 24, has to do with the NPDES  
10 permit?

11               A.       Right.

12               Q.       Okay. And it was your understanding  
13 that at the time you wrote this report, Skokie  
14 Valley had applied for a renewal of its permit; is  
15 that correct?

16               A.       There had been a renewal application  
17 in, that's correct.

18               Q.       And you were going out to the site to  
19 determine what in December 5 of 1997?

20               A.       That's what the facility site review  
21 is, a field verification of the day.

22               Q.       It was to determine what, sir? When  
23 you say a field site verification --

24               A.       Well, it was just to determine what

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1 was happening on that day. And I have a summary of  
2 findings that they were discharging the waters to  
3 the State. I didn't say Avon drainage ditch without  
4 an NPDES permit.

5               Q.       Okay. When you say they were

6 discharging water into the State --

7 A. Into waters of the State.

8 Q. -- into waters of the State, what were  
9 they discharging?

10 A. They were discharging out of their  
11 NPDES outfall, which was no longer permitted under  
12 an NPDES permit.

13 Q. Okay. Did you test that?

14 A. I don't believe I did that day, no.

15 Q. Okay. So you don't have any test  
16 results to determine whether or not the water that  
17 was being discharged when you were out at the site  
18 actually had contaminants in it?

19 MR. MURPHY: Madam Hearing Officer, I  
20 have an objection as to relevance.

21 MR. JAWGIEL: They brought this up.  
22 They brought this whole line up about --

23 MR. MURPHY: If they are discharging  
24 without a permit to Grayslake, that's

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1 discharging without a permit and this was a  
2 violation by itself.

3 MR. JAWGIEL: It goes to whether or  
4 not there's some sort of contaminant cause.

5 MR. MURPHY: There's no requirement  
6 for impact to be found in any of this.  
7 That's a red herring that should not be part  
8 of these proceedings.

9 MR. JAWGIEL: It goes to 42H; clearly  
10 it goes to 42H. It goes to environmental  
11 impact.

12 HEARING OFFICER SUDMAN: Well, I'm  
13 going to allow it.

14 MR. JAWGIEL: Thank you.

15 HEARING OFFICER SUDMAN: The Board can  
16 weigh your objection accordingly.

17 BY MR. JAWGIEL:

18 Q. Okay. You have no test results from  
19 this particular visit you had of Skokie Valley back  
20 in December of 1997 which would indicate to you that  
21 there were any contaminants in the discharge water  
22 that you identified?

23 A. I didn't take any samples that day.

24 Q. No samples?

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1 A. No samples that day.

2 Q. Okay. When was the last time you took  
3 samples of Skokie Valley with respect to the

4 discharge water?

5 A. I believe it was in '92 where we first  
6 established that they had an accessible sampling  
7 point. Early in '92, I think, I took the sample.

8 Q. Okay. And that was the last time you  
9 took a sample?

10 A. That's correct.

11 Q. Now, with respect to this accessible  
12 point, you were able to take samples from this site  
13 in 1992; is that correct?

14 A. Yes.

15 Q. Where did you take the sample from?

16 A. From a spigot that's in the manhole  
17 that their lagoon is connected to, there second  
18 cell.

19 Q. And who put that spigot in?

20 A. I don't know.

21 Q. Was it there back in 1991?

22 A. I don't know.

23 Q. Was it there in 1992?

24 A. It was in '92 when I was there.

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1 Q. Okay. Was it there in 1990?

2 A. I don't know.

3 Q. Was it there in 1989?

4 A. Don't know.

5 Q. Was it there in 1988?

6 A. I don't know when they got that  
7 easement. I don't know.

8 Q. Was it there in 1987?

9 A. I don't believe so.

10 Q. So you don't know if it was between  
11 1988 or 1987, fair statement?

12 A. Fair statement? The first time I was  
13 able to establish -- let's go back. Are you going  
14 back to the discharge itself to Grayslake?

15 Q. No. I'm talking about spigot.

16 A. Well, the spigot -- I first got -- for  
17 one thing, when they actually got the easement to  
18 put in this outfall underneath the railroad tracks,  
19 that's first, and then second is to get an  
20 acceptable sampling  
21 point. In previous inspections when you opened up  
22 the manhole, there was a pipe going through the  
23 manhole but --

24 MR. JAWGIEL: Your Honor, I would ask

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1 that his response be stricken from the record

2 as nonresponsive.

3 MR. MURPHY: Your Honor, absolutely  
4 not. He's responding. He's trying to figure  
5 out when the spigot was there. He's trying  
6 to say during certain inspections on certain  
7 dates, it wasn't there. It's exactly  
8 responsive.

9 HEARING OFFICER SUDMAN: I mean, I'm  
10 going to allow his answer to stand but can we  
11 just cut to the chase here?

12 BY MR. JAWGIEL:

13 Q. You don't know when the spigot was  
14 installed, do you, sir?

15 A. I was only -- you're right. I was  
16 only able to establish it was installed in 1992.

17 Q. You don't know if it was installed in  
18 1992, you just know it existed in '92? You don't  
19 know when it was installed, do you?

20 A. Well, I tried to establish that before  
21 but I was met with resistance.

22 Q. Once?

23 A. Once.

24 Q. Back in 1987?

1           A.       No, I think that was later.

2           Q.       Where did you get the sampling that  
3 you took in March of 1995?

4           A.       Are we talking about the Avon drainage  
5 ditch?

6           Q.       From the farm tile.

7           A.       In earlier testimony, I explained I  
8 took a cooler and I went to the tile and grabbed a  
9 sample.

10          Q.       Okay. And you were actually on the  
11 farm property, weren't you, when you were taking  
12 that?

13          A.       Yes, I was.

14          Q.       Did you ever notify Skokie Valley  
15 Asphalt that they had failed to file a DMR?

16          A.       Did I personally?

17          Q.       Yes.

18          A.       No.

19          Q.       Was that part of your responsibility  
20 as someone in the field for this particular  
21 department to look for a compliance of filing DMRs?

22          A.       The only administrative responsibility  
23 I have in the field is to verify whether the DMRs  
24 are correct.

1 Q. So whether or not one is filed or not  
2 is not your responsibility; is that correct?

3 A. It's my responsibility if we have  
4 violations to at least alert the compliance  
5 assurance section if we have violations. There is  
6 an auditing system as I understand it.

7 But I do acknowledge if there are  
8 or not submittals of DMRs. But whether it's my  
9 personal responsibility to initiate a compliance  
10 inquiry letter, it can be.

11 Q. Okay. Did you ever initiate a  
12 compliance letter regarding missing DMRs for Skokie  
13 Valley?

14 A. I might have mentioned it on a report  
15 or memo, but I don't remember.

16 Q. You might have mentioned it? Do you  
17 have that report or memo with you?

18 A. I don't remember.

19 Q. So you're speculating?

20 A. I'm speculating, right.

21 Q. Okay. It's been your experience that  
22 the Illinois EPA loses DMRs on occasions; isn't  
23 that correct?

24 A. The Illinois EPA loses DMRs?

1 Q. (Indicating.)

2 A. I personally haven't heard of it, but  
3 I imagine anything is possible.

4 Q. In your 22 years of experience with  
5 the Illinois EPA, are you aware of the EPA ever  
6 mishandling documents that were submitted by a  
7 facility, misfiling them, sending them to the wrong  
8 person, sending you documentation that wasn't within  
9 your region or anything along those lines?

10 A. Yes, I have.

11 MR. MURPHY: Madam Hearing Officer,  
12 that was a compound question.

13 HEARING OFFICER SUDMAN: That was a  
14 pretty compound question but the gist of it  
15 was --

16 MR. JAWGIEL: Mishandling of  
17 documents.

18 HEARING OFFICER SUDMAN: --  
19 mishandling of documents, so --

20 THE WITNESS: Yes, I have.

21 BY MR. JAWGIEL:

22 Q. Were Mr. Larry Frederick and  
23 Mr. Richard Frederick involved personally in the  
24 renewal of the NPDES permit as far as you're aware?

1                   MR. MURPHY:  Objection, calls for  
2                   speculation.

3                   MR. JAWGIEL:  I said as far as he's  
4                   aware.

5                   HEARING OFFICER SUDMAN:  As far as  
6                   you're aware, you can go ahead and answer it.

7                   THE WITNESS:  I believe they had some  
8                   signatory requirement.

9  BY MR. JAWGIEL:

10                  Q.        Beyond that, anything else that you're  
11                  aware of that they did?

12                  A.        I wasn't privy to the actual  
13                  application process on their behalf.

14                  Q.        Was it your understanding that the  
15                  NPDES permit that was issued to Skokie Valley named  
16                  Skokie Valley as the permittee only?

17                  A.        Yes.

18                  Q.        And is it your understanding that  
19                  Skokie Valley as permittee was the entity required  
20                  to submit the DMRs?

21                  A.        Yeah, I looked at that as the entity,  
22                  that's correct, Skokie Valley Asphalt.  That's who  
23                  was issued the NPDES permit.

24                  Q.        So would it be fair to say that

1 Larry Frederick and Richard Frederick were not the  
2 permittees under the NPDES permit as you're aware of  
3 it to Skokie Valley; is that correct?

4 A. Well, the permit goes to Skokie Valley  
5 Asphalt. The responsible official is whoever signed  
6 off on the permit application.

7 Q. When you say responsible individual,  
8 are you talking about the person that certifies the  
9 NPDES at the bottom of the -- I'm sorry, certifies  
10 the DMR, at the bottom of the DMR?

11 A. Well, that's who they say. It's not  
12 always that way. I mean, there's -- whoever is the  
13 responsible official on the permit application and  
14 whoever is the responsible official on the DMR is  
15 who they say it is.

16 Q. Well, when you say responsible person  
17 on the DMR, are you talking about the person who  
18 signs the DMR certifying the DMR?

19 A. Well, that's who they say is the  
20 responsible official certifying that DMR.

21 Q. Okay. Well, who was the responsible  
22 party with respect to the NPDES permit that was  
23 issued to Skokie Valley?

24 A. You're talking about the original

1 NPDES permit? I don't have the permit application  
2 in front of me.

3 Q. So as you sit here today, you don't  
4 know who that person was?

5 A. That's correct.

6 Q. Has it been your experience in dealing  
7 with I would assume many different types of  
8 businesses that smaller businesses have difficulty  
9 understanding the requirements of the NPDES permit?

10 MR. MURPHY: Objection, calls for  
11 speculation.

12 MR. JAWGIEL: I'm asking in his  
13 experience.

14 HEARING OFFICER SUDMAN: Well, in your  
15 experience, if you have any idea, you can  
16 answer.

17 THE WITNESS: All right. In my  
18 experience, smaller -- when you say smaller,  
19 you mean -- smaller operations do have a  
20 tendency not to understand the permit  
21 conditions as a whole.

22 I mean, not all of them. The  
23 majority of them perfectly do, but I do see a

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1           permittees.

2   BY MR. JAWGIEL:

3           Q.       Okay.  And what are you aware of the  
4   Illinois EPA doing in order to educate or edify the  
5   smaller permittees into what they need to do?

6                   MR. MURPHY:  Madam Hearing Officer,  
7                   objection, relevance.  This has no bearing on  
8                   the case.

9                   HEARING OFFICER SUDMAN:  This is  
10                   really getting a little off.  I don't know  
11                   where this is going.  I mean, I agree with  
12                   him.

13                   MR. JAWGIEL:  Well, I think it goes to  
14                   the fact that if he's out there complaining  
15                   that they don't have certain things, what  
16                   does he do in order to educate the person so  
17                   they can comply.

18                   HEARING OFFICER SUDMAN:  But I don't  
19                   think the People have alleged he's in a  
20                   capacity to do that, and I don't think he's  
21                   testified to anything to that effect.

22   BY MR. JAWGIEL:

23 Q. Okay. As you sit here today, do you  
24 have any recollection of any conversations you've

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1 had with Larry Frederick and I mean, verbatim  
2 recollection?

3 A. Maybe some verbatim, yes, I guess.

4 Q. Okay. What conversation do you  
5 remember having with Larry Frederick verbatim?

6 MR. COHEN: Objection. There's no  
7 relevancy to this question to anything. If  
8 he wants to say a conversation related to  
9 DMRs or the NPDES permit, then maybe we can  
10 talk about it at this hearing.

11 HEARING OFFICER SUDMAN: I agree.  
12 Could you be a little bit more specific?

13 MR. JAWGIEL: Sure.

14 BY MR. JAWGIEL:

15 Q. Do you remember having any  
16 conversations with Larry specifically regarding the  
17 requirements of the NPDES permit?

18 A. With Larry regarding the NPDES permit,  
19 no.

20 Q. Did you ever check to see how the  
21 samples were being analyzed for Skokie Valley during

22 the period of time where they held the NPDES permit?

23 A. I believe that during inspections I  
24 did look at some of their lab sheets which they got

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1 back from Northshore Sanitary District who I believe  
2 was their contract lab.

3 Q. Okay. And when you reviewed those  
4 documents, you found them to be in order?

5 A. Generally, yes.

6 Q. Did you find anything to be out of  
7 order?

8 A. I don't remember anything being out of  
9 order specifically.

10 MR. MURPHY: I'm sorry. I've got to  
11 object on vagueness because I don't know what  
12 out of order or in order means.

13 MR. JAWGIEL: Those are the words he  
14 used. That's the testimony of the witness.

15 MR. MURPHY: That was in the question.  
16 You can't fault him for using those words in  
17 the answer when it was in the question.

18 MR. JAWGIEL: Your Honor, he used that  
19 in his prior answer.

20 HEARING OFFICER SUDMAN: Well, would

21           you like to phrase it as anything unusual, is  
22           that what you mean?

23                         MR. JAWGIEL: I think I asked him when  
24           you reviewed those documents, did you find

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1           them to be -- well, let me ask this question.

2 BY MR. JAWGIEL:

3           Q.        When you reviewed those particular  
4 documents, those reports, did you find that they  
5 were in compliance or what your expectations were  
6 for analyzing those samples?

7           A.        I could verify that Northshore  
8 Sanitary District received and did an analysis.

9           Q.        You're aware that Skokie Valley  
10 Asphalt Company no longer has an NPDES permit; is  
11 that correct?

12          A.        Yes.

13          Q.        Are you also aware that the entity  
14 Skokie Valley no longer exists?

15          A.        No.

16          Q.        If, for example, Skokie Valley -- for  
17 the sake of this question -- no longer exists as a  
18 legal entity in the State of Illinois, is it your  
19 understanding they would no longer have a

20 requirement to file a DMR in the current status of  
21 the NPDES?

22 A. Whoever is the owner of the facility  
23 under the NPDES permit is the one who's required to  
24 submit a DMR.

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1 Q. Is the NPDES permit transferable?

2 A. Yes.

3 MR. JAWGIEL: That's all I have.

4 HEARING OFFICER SUDMAN: Thank you.

5 Redirect?

6 MR. MURPHY: I have a few.

7 R E D I R E C T E X A M I N A T I O N

8 BY MR. MURPHY:

9 Q. Mr. Jawgiel asked you a question about  
10 the car dealership?

11 A. Yes.

12 Q. You testified that it was located  
13 north of Skokie Valley Asphalt?

14 A. Yes.

15 Q. It's also located north of the farm  
16 tile where you collected the samples?

17 A. Yes.

18 Q. How far north is it from there?

19           A.       I don't know, maybe about a quarter of  
20 a mile.

21           Q.       It's actually downstream from where  
22 you collected the samples?

23           A.       Yes.

24           Q.       It's downstream from where the farm

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1 tile was?

2           A.       Yes.

3           Q.       Has it ever been your experience in  
4 your work with Illinois EPA and the work you did to  
5 ensure compliance with water pollution laws and  
6 regulations that contaminants travel against current  
7 upstream?

8                   MR. JAWGIEL: Your Honor, I'm going to  
9 object. He's talking about upstream on the  
10 actual ditch itself, but we don't know the  
11 direction of the drain tiles or where the  
12 drain tiles patch in or discharge, so it's a  
13 foundational objection.

14                   HEARING OFFICER SUDMAN: Well, that is  
15 true. I don't know the direction of the  
16 water, so I don't know --

17                   MR. JAWGIEL: Regardless of the water

18 direction, we don't know where the drain  
19 tiles are from the car dealership to this  
20 area, so that's really the issue because  
21 that's where the samples are coming out of is  
22 the farm tile. So regardless of how the  
23 water is moving on the drainage ditch, it has  
24 no relevance whatsoever.

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1 It has to do with the  
2 configuration of these tiles underneath the  
3 ground. And it was clear from his testimony  
4 there was no investigation regarding other  
5 contributory sources into this tile,  
6 although, they thought there were some.

7 MR. MURPHY: I'll withdraw the  
8 question.

9 HEARING OFFICER SUDMAN: Okay.

10 BY MR. MURPHY:

11 Q. Wasn't it your testimony that you did  
12 try to investigate other tie-ins to the farm tile  
13 but you were unsuccessful in finding any?

14 A. That's true.

15 Q. And it's difficult to do so?

16 A. That's true. Usually farm tiles are

17 not connected to storm sewers.

18 Q. Mr. Kallis, do you need a warrant to  
19 inspect properties to ensure compliance with the  
20 Illinois Environmental Protection Act and  
21 Regulations?

22 A. No.

23 Q. Do you need a warrant to take samples?

24 A. No.

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1 Q. There's a little bit of confusion back  
2 and forth during your cross-examination about these  
3 subject matters but I just wanted to be clear about  
4 this now.

5 Was Skokie Valley Asphalt ever  
6 permitted to discharge to Avon drainage ditch?

7 A. No.

8 Q. Was Skokie Valley allowed to discharge  
9 to Grayslake without an NPDES permit?

10 A. No.

11 Q. Was Skokie Valley Asphalt allowed to  
12 discharge into Grayslake or a tributary to Grayslake  
13 after the NPDES expired?

14 MR. JAWGIEL: Your Honor, I'm going to  
15 object. This has been asked and answered.

16 We've been through this ad nauseam.

17 HEARING OFFICER SUDMAN: Well, he's  
18 clarifying it for the record. I don't have a  
19 problem with that.

20 THE WITNESS: No.

21 BY MR. MURPHY:

22 Q. When did you first see the accessible  
23 representative sampling point?

24 A. In '92, early '92.

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1 Q. And the NPDES was issued in 1986?

2 A. (Indicating.)

3 Q. In fact you tried to see the  
4 accessible sampling point in 1991, correct?

5 MR. JAWGIEL: I'm going to object to  
6 the leading nature. He's leading on the  
7 dates. He can simply ask him when he went  
8 out there, when he tried to do it.

9 MR. MURPHY: He's right. I can do  
10 that.

11 HEARING OFFICER SUDMAN: Okay.

12 BY MR. MURPHY:

13 Q. Did you try to see the representative  
14 sampling point in May of 1991?

15           A.       Yes.

16           Q.       Were you allowed to see it?

17           A.       No.

18           Q.       In fact, the Frederick brothers  
19 stopped you from seeing it?

20           A.       Not directly, but essentially, yes.

21                    MR. MURPHY:  Nothing more at this  
22 time.

23                    MR. JAWGIEL:  Literally just a couple  
24 more questions.

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1                    HEARING OFFICER SUDMAN:  Okay.

2                    R E C R O S S - E X A M I N A T I O N

3 BY MR. JAWGIEL:

4           Q.       When you say not directly, did anybody  
5 from Skokie Valley tell you you couldn't go see it?

6           A.       Well, I was more or less told to leave  
7 the premises in a rather volatile way and I thought  
8 it would be better if I left.

9           Q.       Well, isn't that a direct -- directly  
10 telling you you can't go into it as opposed to not  
11 directly?  I mean, it's either one or the other,  
12 sir.

13                    It's either they told you to leave

14 the premises and you were directly told you couldn't  
15 see it or they said they didn't do that?

16 A. I would find it very hard to testify  
17 in this room if I was told to get out of this  
18 building.

19 Q. Well, you have authority, don't you,  
20 sir, that if someone tells you to get off the  
21 property that you could maybe file a report and that  
22 they prevented me from doing my job and that I  
23 should maybe take it to the next level so I can get  
24 on the property and do my job?

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1 A. I did write it in a report.

2 Q. Do you have that report?

3 A. Somewhere here, yeah.

4 Q. Okay. Is that the 1991 report that we  
5 were talking about here?

6 A. Yeah, I think so.

7 Q. Okay. And did you go back out there  
8 with any sort of special authority afterwards to do  
9 your job?

10 A. I didn't need the authority later on.  
11 I just went there and --

12 Q. And they let you on to do your job?

13           A.       Yes, they did.  
14                   MR. JAWGIEL:  That's all I have.  
15                   MR. MURPHY:  No more.  
16                   HEARING OFFICER SUDMAN:  Okay.  
17                            All right, Mr. Kallis, we are  
18           finished with you for now, although, I  
19           understand that --  
20                   MR. JAWGIEL:  We may call him in our  
21           case in chief tomorrow.  
22                   HEARING OFFICER SUDMAN:  Okay.  
23                            (Witness excused.)  
24                   MR. MURPHY:  Could we have a moment

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1           off the record to discuss timing for  
2           Mr. Kallis?  
3                   HEARING OFFICER SUDMAN:  Yes.  
4                            Let's go off the record.  
5                   THE REPORTER:  Okay.  
6                            (Whereupon, a discussion  
7                            was had off the record.)  
8                            (Whereupon, after a short  
9                            break was had, the  
10                           following proceedings  
11                           were held accordingly.)

12 HEARING OFFICER SUDMAN: We are back  
13 on the record and we are ready for the People  
14 to call their next witness.

15 MR. MURPHY: Madam Hearing Officer,  
16 the State calls Donald Klopke.

17 HEARING OFFICER SUDMAN: Mr. Klopke,  
18 would you please have a seat over there and  
19 the court reporter will swear you in.

20 (Witness sworn.)

21  
22  
23  
24

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1

2

3 WHEREUPON:

4

DONALD KLOPKE

5 called as a witness herein, having been first duly  
6 sworn, deposeth and saith as follows:

7

D I R E C T E X A M I N A T I O N

8

BY MR. MURPHY:

9

Q. Would you please state your name for

10 the record?

11           A.       Yes. My name is Don Klopke. I'm  
12 with --  
13           Q.       How do you spell your last name?  
14           A.       K-L-O-P-K-E.  
15           Q.       Who is your employer?  
16           A.       The Illinois Environmental Protection  
17 Agency.  
18           Q.       How long have you been employed with  
19 Illinois EPA?  
20           A.       March of 1980.  
21           Q.       So approximately 23 years?  
22           A.       Correct.  
23           Q.       Which bureau do you work for at  
24 Illinois EPA?

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1           A.       I work currently with the office of  
2 emergency response in the emergency operations unit.  
3           Q.       Did that office of emergency response  
4 go by a different name prior?  
5           A.       I believe back at the time of this  
6 case it was the office of chemical safety, and I was  
7 in the response unit similar -- basically the same  
8 group.  
9           Q.       Same function?

10 A. Same function.

11 Q. What does the office of emergency  
12 response or the emergency response unit do?

13 A. Well, our task -- our mission is to  
14 protect the public health and safety in the  
15 environment and with that we respond to emergencies  
16 dealing with chemicals, petroleum. We deal with  
17 complaints of oil or something on a body of water.  
18 We, you know, do odor complaints, things like that.

19 Q. Have you worked for the ERU or  
20 emergency response unit the entire time you worked  
21 at Illinois EPA?

22 A. No. I worked with the bureau of water  
23 roughly from about -- full-time from about 1980 to  
24 1984. In '84, I started to work with the emergency

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1 response unit on a semi full-time basis, and then in  
2 '86, I believe I became a full-time member of the  
3 emergency response unit.

4 Q. Okay. How many of the situations you  
5 just described have you responded to on behalf of  
6 Illinois EPA?

7 A. Hundreds. I would say hundreds of  
8 emergencies over the course of that time.

9 Q. Okay. And how many of these hundreds  
10 of emergencies dealt with spills of oil or releases  
11 of oil?

12 A. I would say about 50 percent or more.

13 Q. What was your job title at Illinois  
14 EPA at the time -- well, let me withdraw that. I'll  
15 come back to that in a moment.

16 Can you briefly describe for the  
17 board your duties while working in the emergency  
18 response unit?

19 A. As I mentioned a little bit earlier,  
20 we respond to a lot of different types of  
21 emergencies, citizens' complaints, requests, you  
22 know, from fire departments. Our goal is to, you  
23 know, protect public health and safety. When  
24 incidents come in, complaints come in, we go out and

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1 try to do the front end of an investigation to  
2 confirm that there's something out there on certain  
3 situations.

4 Other situations, leaking  
5 underground storage tanks, we'll get a call on the  
6 emergency end to go out -- if the material is moving  
7 off the property, we go out to assist the local fire

8 department to try and find out who the responsible  
9 party is and then work with that responsible party  
10 to try and come up with a solution to mitigate any  
11 type of a release.

12                               We deal with the pipeline breaks,  
13 petroleum and chemicals, again, working --  
14 responding to it, verifying that there's something  
15 there and then working with the responsible party.  
16 Once we find that person, we have to come up with a  
17 solution.

18                               Other things that we deal with  
19 are, as I mentioned, odor complaints coming out of  
20 fixed facilities or, you know, other types of  
21 facilities. Another thing that we deal with is  
22 abandonments, things that are left on the side of  
23 the road that might be hazardous to the public.

24                               We'll get a call from the local

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1 authority to try and identify it and then hopefully  
2 assist in getting those things removed. Most  
3 recently in the last couple of years we've also  
4 become part of a weapons of mass destruction team  
5 being the science component along with the state  
6 police tactical response for counter-terrorism.

7 Q. Thank you.

8 Can you briefly describe your  
9 education?

10 A. Bachelor's degree in biology from the  
11 University of Illinois, Champaign and a master's in  
12 environmental science in civil engineering also from  
13 the University the Illinois in Champaign.

14 Q. Was the degree a bachelor's of  
15 science?

16 A. Yes.

17 Q. And the master's was a master's of  
18 science?

19 A. Correct.

20 Q. What about training provided by  
21 Illinois EPA and/or any other agency?

22 A. Every year we're required through OSHA  
23 to have an eight-hour refresher training and that's  
24 provided by the state. We also have the opportunity

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1 probably on the average of a week of additional  
2 training that might be provided by the USEPA who's a  
3 big source in training due to the lack of cost to  
4 attend also, you know, attend training through the  
5 Illinois Fire Service Institute.

6 I attended a national spill  
7 response school provided from the Corpus Christi  
8 University in Texas, the U.S. Coast Guard response  
9 school in Chicago, air monitoring, sampling of  
10 hazardous materials, emergency response to hazardous  
11 materials, things like that.

12 Q. The spill classes that you mentioned,  
13 did they relate to oil spills?

14 A. That's correct.

15 Q. So both the one in Corpus Christi and  
16 the one by the Coast Guard?

17 A. Yes.

18 Q. Are you familiar with the site  
19 formally known as Skokie Valley Asphalt in  
20 Grayslake that is the subject of these proceedings?

21 A. Yes, I am.

22 Q. And are you familiar with the area  
23 surrounding Skokie Valley Asphalt?

24 A. Yes, I am.

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1 Q. How are you familiar with either that  
2 site -- or both the site and surrounding area?

3 A. I visited those sites back --

4 Q. Do you remember when?

5           A.       I know I was out there on the 19th of  
6 April 1995 and possibly I may have been in the area  
7 previous to that.

8           Q.       Mr. Klopke, have you inspected sites  
9 where there's been possible oil contamination?

10          A.       Yes.

11          Q.       How did ERU or OER as it's currently  
12 known handle such complaints?

13          A.       Well, we respond to the complaint to  
14 first verify whether there is or isn't a problem in  
15 the impacted area and then we will, you know, make a  
16 search of the area, the likely potentially  
17 responsible parties, and do as much legwork as we  
18 can to both look visually at the site's and then  
19 also talk to the owners of the property to see if  
20 there's been any type of accidents on the site that  
21 might, you know, may not have been reported but now  
22 is showing up off-site.

23          Q.       Okay. Does any of your efforts  
24 include working with USEPA on these oil spill cases?

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1           A.       Yes, it does.

2           Q.       Okay. Why do you call or coordinate  
3 with USEPA in those instances where you do?

4           A.       In certain situations where we're not  
5     able to find a responsible party to pay for the  
6     cleanup, we as a state agency do not have funding to  
7     hire a contractor to go out there and do the  
8     cleanup.

9                         We then call the USEPA who has  
10    that capability, that resource, to be able to hire  
11    somebody in the event that we can't find a person to  
12    take responsibility and we also get them out there  
13    for their expertise.

14           Q.       And what type of business was Skokie  
15    Valley Asphalt?

16           A.       I believe it was an asphalt type -- an  
17    asphalt business or something similar. As the  
18    company name implies, I would think that they were  
19    in the business of --

20                         MR. JAWGIEL:    Your Honor, I'm going  
21    to object. He's speculating at this point  
22    and I ask that it be struck.

23                         HEARING OFFICER SUDMAN: Well, I think  
24    he's answered it.

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1                         An asphalt company?

2                         THE WITNESS: Right.

3 MR. MURPHY: Thank you.

4 BY MR. MURPHY:

5 Q. Could you describe the area around  
6 Skokie Valley Asphalt, the former Skokie Valley  
7 Asphalt site?

8 A. Well, the Avon Fremont ditch lies to  
9 the east. There's railroad tracks that lye to the  
10 north. A farm field, I believe, surrounded the  
11 facility and -- yeah. I recall a farm field  
12 surrounding it at least on the north -- or I mean,  
13 on the east, south, and west sides of the property.

14 Q. Were there any other industries,  
15 factories or gas stations in the area?

16 A. Not that I know of other than Mitch's  
17 Landscaping was to the west.

18 Q. What kind of company was Mitch's  
19 Landscaping?

20 A. Again, from recollection was a  
21 landscaping company that would provide landscaping  
22 services to either subdivisions and personal  
23 landscaping or possibly, you know, larger companies.

24 Q. Now, you mentioned you went to the

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1 site in early 1995?

2 A. Correct.

3 Q. How soon after arriving at the Avon  
4 drainage ditch in the former Skokie Valley Asphalt  
5 site did you determine what kind of release was  
6 involved?

7 A. Well, I immediately saw the sheen, the  
8 oil sheen on the surface -- the petroleum sheen on  
9 the surface of the Avon Fremont ditch and there was  
10 a strong odor of petroleum.

11 Q. Okay. So those two things indicated  
12 to you that it was an oil spill or oil release?

13 A. Correct.

14 Q. And that was based upon your training  
15 and experience?

16 A. Correct.

17 Q. In which direction does the Avon  
18 drainage ditch flow?

19 A. It flows to the north.

20 Q. Okay. Is there a farm field tile  
21 outfall that connects to Avon drainage ditch?

22 A. Yes.

23 Q. And where is that located?

24 A. That is located on the west bank of

1 the Avon Fremont ditch south of the railroad tracks.

2 Q. Where is that field tile in relation  
3 to the Skokie Valley Asphalt site?

4 A. Due east.

5 Q. Okay. When you inspected the Skokie  
6 Valley Asphalt site in April of '95, who else was  
7 with you that day?

8 A. Ken Savage from our agency and also  
9 Betty Lavis from the USEPA.

10 Q. Why were USEPA personnel with you that  
11 day?

12 A. They were contacted by our agency to  
13 assist in dealing with the problem in the Avon  
14 Fremont ditch.

15 Q. You mentioned that the Avon drainage  
16 ditch flows north. Does it flow into Grayslake, the  
17 town?

18 A. It flows -- I believe, it flows  
19 through Grayslake, the town.

20 Q. As opposed to Grayslake, the body of  
21 water?

22 A. Correct.

23 Q. Did you notice anything in the Avon  
24 drainage ditch in that direction downstream from the

1 field tile?

2 A. I recollect going across a subdivision  
3 street that goes over the Avon Fremont drainage and  
4 I believe -- I recollect seeing and smelling the  
5 diesel fuel at that point.

6 Q. And that was downstream from the field  
7 tile?

8 A. Yes.

9 Q. Did you inspect the area around  
10 Mitch's Green Thumb Nursery?

11 A. I recall visiting Mitch's Green Thumb,  
12 yes.

13 Q. Did you see any oil there?

14 A. No.

15 Q. And could the oil have been coming  
16 from any other areas during your inspection of April  
17 of '95 --

18 MR. JAWGIEL: I'm going to object.

19 MR. MURPHY: Well, can I finish the  
20 question?

21 MR. JAWGIEL: Sure. I'm sorry.

22 Q. -- other than the Skokie Valley  
23 Asphalt site?

24 MR. JAWGIEL: Objection to the

1 foundation, your Honor.

2 HEARING OFFICER SUDMAN: Well, he did  
3 just testify that he had been to several  
4 other places, correct?

5 MR. JAWGIEL: Several other places  
6 that we have not talked about. He asked him  
7 did you see oil at Mitch's Green Thumb  
8 Nursery and he said no, but he also said that  
9 he smelled diesel fuel, so we don't even know  
10 what the substance is in the water.

11 We have multiple substances that  
12 it possibly could be. It hasn't been  
13 established what the substance actually is.

14 HEARING OFFICER SUDMAN: And what was  
15 your question again?

16 MR. MURPHY: My question was could the  
17 oil that he observed in the Avon drainage  
18 ditch have been coming from other areas  
19 during his inspection of April of '95 other  
20 than the Skokie Valley Asphalt site?

21 HEARING OFFICER SUDMAN: I'm going to  
22 allow it.

23 You may answer.

24 THE WITNESS: I did not see any other

1 responsible parties or could not confirm that  
2 anything else was coming off of other  
3 properties.

4 BY MR. MURPHY:

5 Q. Did you observe anything at the Skokie  
6 Valley Asphalt site that suggested to you it was  
7 coming from that site?

8 A. Well, I recall seeing above ground  
9 storage tanks on the property which, you know, not  
10 having -- from afar seeing above ground storage  
11 tanks, and then there's always the possibility as a  
12 responder that a large facility might have  
13 underground storage tanks there that might be a  
14 contributing factor.

15 MR. JAWGIEL: Your Honor, I'm going to  
16 object and ask that that be struck as being  
17 speculative. If a large facility may have it  
18 or not is speculation.

19 MR. MURPHY: He's just giving his  
20 opinion based on his experience.

21 HEARING OFFICER SUDMAN: I agree.

22 You can give your opinion.

23 BY MR. MURPHY:

24 Q. Mr. Klopke, I'd like to direct your

1 attention to tab 25 in the binder that you have in  
2 front of you.

3 A. Yes.

4 Q. Take a moment to look through that.

5 (Witness perusing  
6 the document.)

7 A. Okay.

8 Q. Do you recognize it?

9 A. Yes.

10 Q. What is it?

11 A. It's a pol representative sent by the  
12 United States Environmental Protection Agency.

13 Q. What is a pol representative?

14 A. It's a pollution report.

15 Q. That's an acronym?

16 A. Short for pollution report.

17 Q. It was prepared by the USEPA?

18 A. Correct.

19 Q. What date does it give?

20 A. May 3, 1995.

21 Q. And who is this memo from?

22 A. I believe it's from -- it reads  
23 Betty Lavis, USEPA.

24 Q. And she was the individual that was

1 present with you in April of '95 at or near the  
2 site?

3 A. Correct.

4 Q. And does it indicate who Betty Lavis  
5 sent this memo to?

6 A. A long list of people, including  
7 Ken Savage and myself, Don Klopke, from the IEPA  
8 ERU, monitoring response unit.

9 Q. Is this a document used in the  
10 ordinary course of business between Illinois EPA and  
11 USEPA when there's an oil spill in a body of water?

12 A. Yes.

13 Q. Is it kept in the ordinary course of  
14 business by Illinois EPA?

15 A. Yes.

16 Q. Is this a true and accurate copy of  
17 that report?

18 A. Yes.

19 Q. Does the report indicate whether USEPA  
20 was successful in determining the source of the  
21 petroleum release into the Avon drainage ditch?

22 A. Yes.

23 Q. Where does it do that?

24           A.       Well, under actions taken on page 2,

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1    on April 25, it states that the OSC had planned to  
2    do additional sampling but was met at the site by  
3    the owners of SVAC who said they had found a leak  
4    and would address the problem.

5           Q.       What does an OSC stand for?

6           A.       On-scene coordinator.

7           Q.       And what does SVAC stand for?

8           A.       Skokie Valley Asphalt Company.

9           Q.       Does the report at tab 25 indicate who  
10   the owners and operators of Skokie Valley Asphalt  
11   Company were?

12          A.       I believe on the first page on site  
13   background, it indicates Richard and Larry  
14   Frederick, owner/operator.

15          Q.       So this report indicates that it was  
16   Larry and Richard Frederick on behalf of Skokie  
17   Valley Asphalt Company who were the individuals --  
18   strike that.

19                    So this report indicates that  
20   Larry and Richard Frederick were the individuals on  
21   behalf of Skokie Valley Asphalt Company that dealt  
22   with the regulatory agencies with respect to this

23 environmental issue?

24 MR. JAWGIEL: Your Honor, I'm going to

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1 object. This person is not the person who  
2 drafted this document. He would have no  
3 knowledge of that and, therefore, it is pure  
4 speculation.

5 MR. MURPHY: Absolutely not. It's  
6 a business record. I've laid the foundation  
7 for that and anything --

8 HEARING OFFICER SUDMAN: I agree.  
9 You may answer, if you know.

10 MR. JAWGIEL: Your Honor, he can lay  
11 the foundation for a business record, but if  
12 the person who is testifying didn't draft the  
13 document, they can't interpret the document.  
14 The documents then speak for themselves and  
15 can be admitted into evidence.

16 If there's questionable  
17 interpretation of the document, it's up to  
18 the drafter to clarify it, not speculation on  
19 the part of a witness who did not draft this  
20 particular document.

21 HEARING OFFICER SUDMAN: He can give

22 his opinion.

23 MR. JAWGIEL: We'll object as not  
24 disclosed pursuant to Supreme Court Rule 213.

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1 HEARING OFFICER SUDMAN: Okay.

2 THE WITNESS: Could you repeat the  
3 question, please?

4 MR. MURPHY: Sure.

5 BY MR. MURPHY:

6 Q. So Larry Frederick and Richard  
7 Frederick were the individuals on behalf of Skokie  
8 Valley Asphalt Company that dealt with the  
9 regulatory agencies, USEPA, and Illinois EPA with  
10 respect to this environmental issue?

11 MR. JAWGIEL: Same objection, your  
12 Honor, to the same question he asked.

13 HEARING OFFICER SUDMAN: Same ruling.  
14 Overruled.

15 THE WITNESS: Yes.

16 BY MR. MURPHY:

17 Q. Does the report explain the sources of  
18 contamination at the Skokie Valley Asphalt site?

19 A. Well, it notes a leaking underground  
20 storage tank and also the possibility that -- under

21 actions taken also under May 1, 1995, it notes that  
22 an unregistered leaking underground storage tank as  
23 a possibility of the alleged release -- or the  
24 release.

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1 Q. Okay. Directing your attention to  
2 page 3 under key issues, D, what does the report  
3 indicate there?

4 MR. JAWGIEL: I'm sorry. Which  
5 section?

6 MR. MURPHY: Section D, page 3.

7 MR. JAWGIEL: Thank you.

8 THE WITNESS: It also not only  
9 mentions the 2000-gallon storage tank but it  
10 also mentions the possibility that there may  
11 be additional product under the property that  
12 might be contributing to the release.

13 BY MR. MURPHY:

14 Q. Product being what?

15 A. Petroleum.

16 Q. From the operations at the site?

17 A. Correct.

18 MR. MURPHY: May I have one moment?

19 HEARING OFFICER SUDMAN: Yes.

20 (Brief pause.)

21 MR. MURPHY: Just a couple more  
22 questions.

23 HEARING OFFICER SUDMAN: Sure.

24 BY MR. MURPHY:

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1 Q. Who is Ken Savage?

2 A. He was a partner in the emergency  
3 response unit at that time, an employee in the  
4 emergency response unit.

5 Q. And you worked with him?

6 A. Yes.

7 Q. You worked with him on this case?

8 A. Yes.

9 Q. Was he involved in any investigations  
10 of the site apart from you?

11 A. Yes.

12 Q. And when did they occur?

13 A. I believe the file shows some work  
14 done in December and also in February, December of  
15 '94 and February of '95.

16 MR. MURPHY: Nothing further, Madam  
17 Hearing Officer.

18 HEARING OFFICER SUDMAN: Thank you.

19 Mr. Jawgiel?

20 MR. JAWGIEL: Yes. Thank you.

21 C R O S S - E X A M I N A T I O N

22 BY MR. JAWGIEL:

23 Q. Good afternoon, Mr. Klopke.

24 A. Hi.

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1 Q. You personally did not conduct any  
2 tests which would definitively locate the source of  
3 the substance that was coming out of the farm tile  
4 back in 1995 in the SVA area; is that correct?

5 A. Not that I recall.

6 Q. You didn't personally inspect the  
7 above ground storage tanks that were on the SVA  
8 property when you were out there; is that correct?

9 A. My recollection is we did walk the  
10 property on the 19th.

11 Q. Did you inspect the above ground tanks  
12 that you talked about earlier?

13 A. Not physically.

14 Q. Okay. So you saw that they were there  
15 and you believe they could have been a potential  
16 source of this substance and you didn't go inspect  
17 them; is that correct?

18 A. That's correct.

19 Q. Now, with respect to underground  
20 storage tanks, you had indicated that a facility  
21 like SVA possibly could have had underground storage  
22 tanks; is that correct?

23 A. That's correct.

24 Q. And while you were out at the site,

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1 did you ever go and look around the facility for  
2 anything that would be indicative of an underground  
3 storage tank?

4 A. Yes.

5 Q. Did you find any?

6 A. Yes.

7 Q. Did you look inside to see if there  
8 was any indication of a leak in those tanks, for  
9 example, water leaking in or anything along those  
10 lines?

11 A. I don't recall doing that.

12 Q. Did you take a sample of the contents  
13 in the underground storage tank?

14 A. I do not recall doing that.

15 Q. Did you match up any sample whatsoever  
16 of any material on the Skokie Valley site while you

17 were out there during your investigation and match  
18 it to what was found in the drainage ditch?

19 A. Not that I recall.

20 Q. You had indicated that you -- well,  
21 let me just ask you, you said that you saw this oily  
22 substance on the drainage ditch, was it gasoline?

23 A. No.

24 Q. Was it diesel fuel?

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1 A. Possibly.

2 Q. Okay. Was it heating oil?

3 A. Possibly.

4 Q. Was it fertilizer based?

5 A. No, I can't say that.

6 Q. You don't know one way or the other?

7 A. No.

8 Q. So it could be or it couldn't be; is  
9 that fair enough?

10 A. Heating oil?

11 Q. No, fertilizer based.

12 A. Fertilizer based as far as what?

13 Q. Well, was it a fertilizer?

14 A. I don't believe so.

15 Q. Did you test it for that sampling?

16           A.       No. I just seen the sheen and smelled  
17 the odor.

18           Q.       Okay. So based on your smell it could  
19 have been gasoline; it could have been diesel?

20           A.       I did not say gasoline. I said it  
21 could not be gasoline. It could be either diesel  
22 or, number two, heating fuel which have very similar  
23 characteristics both by odor and sight.

24           Q.       Anything else that it could have been

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1 in your experience?

2           A.       No.

3           Q.       Did you see any diesel fuel on the SVA  
4 site when you inspected it?

5           A.       I do not recall seeing anything on the  
6 19th.

7           Q.       Well, at any time that you inspected  
8 the premises, did you see any diesel fuel?

9           A.       I don't recall seeing any diesel fuel  
10 to my knowledge on the site that I can recall.

11          Q.       When you opened up -- when you saw  
12 these underground storage tanks, did you smell any  
13 diesel smell?

14          A.       I did not open the tanks. Typically,

15 it's not our operating procedure to be opening up  
16 underground storage tanks on a property.

17 Q. Well, I thought it was your  
18 responsibility or at least one of your duties to  
19 determine who the responsible party was?

20 A. Yes.

21 Q. Okay. And in doing so, don't you --  
22 if you go to a place that you believe is the  
23 responsible party, wouldn't it be part of your  
24 responsibility to confirm that materials that may be

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1 present on there would be the same materials that  
2 you sampled out of the drainage ditch?

3 A. Usually our course of action is to  
4 approach the property owner initially to see if  
5 there's any type of obvious release that hadn't been  
6 reported or may have been spilled or hadn't been  
7 reported yet. We will try to walk the property to  
8 see if there's any visual contamination.

9 If there are monitoring laws on  
10 the property, we will try to open those up, but a  
11 lot of our work is just trying to get a responsible  
12 party or a potential responsible party to work with  
13 us to try and resolve some off-site impact.

14 Q. Well, you like to use this phrase  
15 responsible party, but really when you would go out  
16 to a site when you did your investigation, based on  
17 your investigation, you didn't know who the  
18 responsible party was, you just thought SVA was a  
19 potential responsible party; isn't that correct?

20 A. Yes.

21 Q. At no point in time did you actually  
22 draw the conclusion that they were the responsible  
23 party based on what you saw, tasted, felt, touched,  
24 smelled out on the site; is that correct?

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1 A. That's correct.

2 Q. You're relying solely on Ms. Lavis'  
3 statements in her report regarding whether or not  
4 SVA was the responsible party?

5 MR. COHEN: Objection, no time frame  
6 to that question.

7 MR. JAWGIEL: Time frame? He just  
8 testified five minutes ago. What kind of  
9 time frame do I need? He's relying solely on  
10 Ms. Lavis' report, which we talked about two  
11 minutes ago.

12 HEARING OFFICER SUDMAN: What kind of

13 time frame do you mean?

14 MR. COHEN: At what point in time is  
15 he relying on that as the responsible party?  
16 There's a lot that's happened since the Lavis  
17 report has come out that this witness may  
18 know of to be able to also know who the  
19 responsible party is.

20 HEARING OFFICER SUDMAN: Could you  
21 please break it down?

22 BY MR. JAWGIEL:

23 Q. In the testimony you gave here today,  
24 do you believe SVA was the responsible party based

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1 upon Ms. Lavis' report; isn't that correct?

2 A. No. I believe there was a report by  
3 Huff and Huff that was sent May 1 to our office  
4 which indicates -- Huff and Huff was their  
5 contractor hired by SVAC and that report states that  
6 a release -- or there was product found on the  
7 property and that they were taking responsibility  
8 for the cleanup in the -- the cleanup of the spill  
9 and also responsible for the spill itself.

10 Q. Okay. Well, let me ask you -- that  
11 report said that they were taking responsibility for

12 the spill itself?

13 A. I believe so.

14 Q. You believe so?

15 A. They were. They were taking  
16 responsibility for the drainage ditch and, if I  
17 recall, the spill itself.

18 Q. Okay. Well, let me ask you this  
19 question: In that report that you saw from Huff and  
20 Huff, did you see any sort of chemical analysis that  
21 would match what was in the drainage ditch and what  
22 was on the facility itself?

23 A. Not that I recall.

24 Q. Okay. Other than the report from Huff

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1 and Huff and Ms. Lavis' report, is there any other  
2 basis for your opinion here today that SVA was the  
3 facility responsible for the discharge?

4 A. There was significant work done by the  
5 consultant and the release stopped soon after that  
6 work was performed on the property, the release to  
7 the creek. There was no -- our file did not  
8 indicate any further complaints of diesel fuel in  
9 the creek after work was performed on the property  
10 and off the property, I believe, by Huff and Huff,

11 and that report never indicated any type of -- any  
12 type of upstream responsible party that was  
13 indicated by their investigation.

14 Q. Well, did Huff and Huff actually do an  
15 area investigation in that report?

16 A. Not that I recall.

17 Q. Okay. So you don't know whether or  
18 not they looked for other alternative sites or not;  
19 is that correct?

20 A. I believe they did some off-site  
21 excavation and that off-site excavation indicated --  
22 did not indicate anything upstream.

23 Q. Okay. Let me ask you this question:  
24 How many drain tiles fed into this farm tile in that

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1 area?

2 A. I don't recall.

3 Q. Did you do any research to find out?

4 A. Not that I recall.

5 Q. Now, are you familiar with pulling  
6 permits given that you have a civil engineering  
7 background, pulling permits in order to do  
8 excavation and drain tile installation in a village?

9 A. Repeat the question, please.

10 Q. Sure.

11 Given that you have a background  
12 in civil engineering, are you familiar with the  
13 process of acquiring a permit to install drain tiles  
14 in a particular city, town or village?

15 A. Not that I recall.

16 Q. Did you do any investigation by going  
17 to the village hall to determine whether or not they  
18 had a schematic or permits or anything that would  
19 indicate to you that there were contributory drain  
20 tiles into this farm tile that were not SVA?

21 A. Not that I recall.

22 Q. So based on your investigation,  
23 setting aside the reports from Ms. Lavis and Huff  
24 and Huff, it was inconclusive whether or not SVA was

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1 a responsible party?

2 MR. COHEN: I object to the form of  
3 that question.

4 THE WITNESS: I would say it was  
5 conclusive --

6 HEARING OFFICER SUDMAN: Sir --

7 MR. COHEN: I object to the form of  
8 that question.

9 THE WITNESS: Sorry.

10 HEARING OFFICER SUDMAN: Would you  
11 rephrase the question, please?

12 MR. JAWGIEL: Sure.

13 BY MR. JAWGIEL:

14 Q. Without seeing the reports from Huff  
15 and Huff that you had indicated and without seeing  
16 the USEPA but based solely on your investigation of  
17 this site, Skokie Valley was only a potential source  
18 for the substance; isn't that correct?

19 A. Well --

20 MR. COHEN: Would you repeat the  
21 question?

22 MR. JAWGIEL: Sure.

23 MR. COHEN: Excuse me, your Honor. If  
24 I may, I think if he limits that question to

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1 the date he was out there, I think it may be  
2 more understandable; it's just a suggestion.

3 HEARING OFFICER SUDMAN: Well, I don't  
4 know that it's necessarily a date-dependent  
5 question.

6 Are you just asking him --

7 MR. JAWGIEL: I'm just asking if he

8 set aside this report --

9 HEARING OFFICER SUDMAN: On the basis  
10 of his investigation.

11 BY MR. JAWGIEL:

12 Q. Based on your investigation alone,  
13 Skokie Valley was only a potential source for this  
14 contamination?

15 MR. COHEN: Then I have to object to  
16 the form of the question because you're  
17 asking this witness to set aside portions of  
18 what is part of his investigation, that being  
19 the USEPA report, that they did receive that  
20 they participated in and the consultant's  
21 report that they did receive and relied on.

22 So if you limit it to time before  
23 they get there, then I think you can ask that  
24 question. But I don't think you can ask him to

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1 erase from his mind --

2 HEARING OFFICER SUDMAN: Yeah, I think  
3 you need to be more specific on what you mean  
4 by his --

5 MR. JAWGIEL: I did. I indicated to  
6 him setting aside the report from

7 Ms. Lavis --

8 HEARING OFFICER SUDMAN: But what does  
9 that include?

10 MR. JAWGIEL: Well, he indicated there  
11 was this report, which is now Exhibit 25.

12 HEARING OFFICER SUDMAN: Yes.

13 MR. JAWGIEL: I'm asking him to set  
14 that aside. And he also identified a  
15 document -- or report I should say from  
16 Huff and Huff, which I'm asking him to set  
17 aside as well, and I'm saying based on -- if  
18 we set those two documents aside based on  
19 your investigation, was Skokie Valley --

20 HEARING OFFICER SUDMAN: On the date  
21 that he talked about?

22 MR. JAWGIEL: Well, yeah.

23 HEARING OFFICER SUDMAN: Okay.

24 BY MR. JAWGIEL:

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1 Q. When you were out on the site, Skokie  
2 Valley was only a potential source for the  
3 contaminants on the date that you were out  
4 investigating; is that correct?

5 A. I don't want to do this to you but

6 could you please just give me that question one more  
7 time?

8 Q. Sure.

9 When you concluded your  
10 investigation while you were still on the site that  
11 day -- I think it was in April of 1995; is that  
12 right?

13 A. Yes.

14 Q. You were out there in April of 1995.  
15 And when you concluded your investigation of the  
16 site, was Skokie Valley only a potential source for  
17 this contamination?

18 A. Yes.

19 Q. What other potential sources did you  
20 list in your report for this contamination?

21 A. I don't believe I generated a report.

22 Q. All right. What other sources of  
23 contamination -- potential sources of this  
24 contamination were there after you completed your

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1 examination?

2 A. As I mentioned earlier, the only  
3 property that was near the area was Mitch's  
4 Landscape.

5 Q. Did you go to the farm to see if the  
6 farmland or the farm in that area had any drain  
7 tiles?

8 A. No -- well, I went to the property  
9 but, as you know, drain tiles aren't really  
10 apparent. I mean, they're very --

11 Q. My question was did you inspect any  
12 drain tiles that may have been on the farm?

13 A. No, not that I recall.

14 Q. Are you familiar that diesel fuel may  
15 be on a farm for equipment, has it been your  
16 experience?

17 A. There's a possibility.

18 Q. So the farm area -- you walked on the  
19 property, but you didn't really -- did you talk to  
20 anybody?

21 A. Well, I believe -- I do not recall  
22 when I drove the perimeter of the property seeing  
23 anything that would lead me to believe that there  
24 was storage or the use of diesel fuel in the area.

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1 Many times there are above ground storage tanks, but  
2 I do not recall seeing those.

3 Q. When you said you drove the permitter

4 of the property, you're talking about the SVA  
5 property?

6 A. No. The area. I mean, as I  
7 mentioned --

8 Q. Well, how far did you drive?

9 A. Probably up the next road down, up the  
10 street.

11 Q. Which would be what?

12 A. South.

13 Q. Which road?

14 A. I don't recall.

15 Q. How far was that from where the Skokie  
16 Valley site was located?

17 A. I don't recall.

18 Q. Are you aware of a car dealership  
19 being in that area, the Skokie Valley area?

20 A. I do not recall that.

21 Q. Did you look to see if there were any  
22 other potential sources of this oily substance other  
23 than Mitch's Green Thumb Nursery and Skokie Valley?

24 A. At the time of that inspection, from

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1 what I recall, those were the only two that stood  
2 out in my -- from my recollection.

3 Q. Okay. Do you see on Exhibit 25,  
4 page 3, under Section D -- I think you were referred  
5 to that as well by Mr. Murphy. Do you see where it  
6 says: EPA must continue the investigation of the  
7 source of the release.

8 A 2000-gallon storage tank leak is  
9 probably not a complete explanation for the  
10 continued release. Do you see that there?

11 A. Yes, sir.

12 Q. Now, does that indicate to you, sir,  
13 that there were more than one source of this  
14 potential contaminant?

15 A. Could you repeat it, please?

16 Q. Sure.

17 Does that indicate to you in your  
18 opinion that there would be more than one source of  
19 this contamination?

20 A. They are saying that there may be more  
21 than one source on the property.

22 Q. Okay. Did you or --

23 A. That there may be one more source on  
24 the property.

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1 Q. Did you or the Illinois EPA as far as

2 you're aware, based on the reports you have in your  
3 file, ever go out to examine the 2000-gallon storage  
4 tank?

5 A. I don't recall doing that, but I  
6 believe the report stated that it was referred to  
7 the leaking underground storage tank program who  
8 typically will follow up on leaking underground  
9 storage tanks.

10 Q. Just so I could understand your  
11 testimony, is it your opinion that it was this  
12 leaking underground storage tank that was the source  
13 of the contamination in the Avon drainage ditch  
14 based on your entire investigation?

15 A. I don't know if I can answer that  
16 other than it seemed to stop once activity was  
17 performed on the property by their consultants.

18 Q. Okay. So you don't know whether or  
19 not what they did on the property at Skokie Valley  
20 stopped the leak or not?

21 A. Other than it stopped showing up in  
22 the creek after the fact.

23 Q. But you don't know? Do you know the  
24 time frame? When did it stop showing up in the

1 creek?

2 A. I don't recall. I don't know.

3 Q. You don't know?

4 A. No.

5 Q. Okay. And when did they start  
6 remediating things actually on the site at Skokie  
7 Valley in your opinion?

8 A. Sometime in late April.

9 Q. Late April?

10 A. Yes.

11 Q. What did they do?

12 A. I believe they constructed some --  
13 based on the Huff and Huff report, they created some  
14 recovery sumps on the property, used a trench that  
15 was excavated to try and find the source of the  
16 release on the property, and then controlled the  
17 material that was on -- or tried to control the  
18 material on the property by using those two points  
19 as collection sumps.

20 Q. Okay. Do you have that report with  
21 you?

22 A. Yes -- not with me here.

23 Q. You don't have that report with you?

24 A. No.

1           Q.       My question then to you, sir, is your  
2 only basis that Skokie Valley then was a source --  
3 or actually one of the bases really that Skokie  
4 Valley was the source was that there was some action  
5 being taken on the property itself and the discharge  
6 ended but at some time that you don't know?

7           A.       Yes.

8           Q.       So you don't know whether or not the  
9 work that was being done on the Skokie Valley  
10 property was contemporaneous to the actual stopping  
11 of the oil source, is that correct, because you  
12 don't know when the oil source stopped; is that  
13 correct?

14          A.       One more time.

15          Q.       Sure.

16                    You had testified that you don't  
17 know when the oil source stopped, so you don't know  
18 whether or not the action that was taken on the  
19 premises itself was contemporaneous to the oil  
20 stopping?

21                   MR. COHEN: I'm going to object to the  
22 use of the word oil source. If he's  
23 referring to oil flow from the drain tile,  
24 that's one thing that we can talk about in

1 the Avon drainage ditch. In terms of oil  
2 source, it's a totally ambiguous term that  
3 we're not talking about yet in this case.

4 HEARING OFFICER SUDMAN: Would you  
5 like to clarify that term?

6 BY MR. JAWGIEL:

7 Q. Well, sir, you don't know whether or  
8 not the actions that were being taken on the SVA  
9 site actually in fact stopped the contamination of  
10 the Avon drainage ditch; is that correct?

11 A. Well, the procedures that were being  
12 done out there are typical to be used on a piece of  
13 property that's had a release to control the source  
14 and protect the downstream receptor.

15 MR. JAWGIEL: I'm going to object.  
16 It's nonresponsive to the question and I ask  
17 that it be struck. I asked him very  
18 specifically you do not know whether or not  
19 in fact the actions taken on the site  
20 actually stopped the leak.

21 HEARING OFFICER SUDMAN: Well, I'm not  
22 going to strike the answer but I would like  
23 you to elaborate as to whether that's a yes,  
24 no or you don't know.

1 THE WITNESS: I would say I don't know  
2 whether they were entirely responsible for  
3 stopping the release to Avon Fremont ditch.

4 HEARING OFFICER SUDMAN: Thank you.

5 THE WITNESS: But it did stop.

6 BY MR. JAWGIEL:

7 Q. Okay. When you say you don't know  
8 that they were entirely responsible, then there's  
9 potentially other sources; is that correct?

10 A. Yes.

11 Q. Sir, what do you base your opinion on  
12 that the actions taken by Skokie Valley on its site  
13 in part caused the contamination to the Avon  
14 drainage ditch to stop?

15 A. Experience in dealing with leaking  
16 underground storage tanks on an emergency basis.

17 Q. Okay. So in your opinion, the source  
18 of the oil would have been the leaking underground  
19 storage tank found on Skokie Valley property; is  
20 that correct?

21 A. No. I believe I said that that's how  
22 I've learned how to deal with problems that are  
23 moving off-site through working as an example with  
24 leaking underground storage tanks.

1 Q. Did you do any follow-up investigation  
2 of either this drain tile or the underground storage  
3 tank?

4 A. Not that I recall.

5 Q. Do you know if the Illinois EPA did  
6 any follow-up with respect to the underground tank  
7 or this drain tile you were referring to?

8 MR. MURPHY: Objection, Madam Hearing  
9 Officer, cumulative. We already got  
10 testimony that the site was inspected in  
11 December of '97 by a different inspector.

12 MR. JAWGIEL: I'm just asking if he  
13 was aware of it.

14 HEARING OFFICER SUDMAN: You can  
15 answer.

16 THE WITNESS: Not that I'm aware.

17 BY MR. JAWGIEL:

18 Q. Did you request that anyone follow up  
19 with respect to the underground storage tank and the  
20 drain tile from the Illinois EPA?

21 A. I don't recall about the underground  
22 storage tank as far as follow-up.

23 Q. Were you deferring to the USEPA as far  
24 as remediating this site?

1           A.       Many times we defer to the USEPA to  
2 take the lead on finding out on a site who is the  
3 responsible party and then --

4           MR. JAWGIEL: Your Honor, I'm going to  
5 ask that the answer be stricken from the  
6 record. I'm about this specific incident in  
7 Skokie Valley, did they allow USEPA to take  
8 over management of the remediation of this  
9 site.

10           HEARING OFFICER SUDMAN: Yes.  
11 Please --

12           MR. JAWGIEL: I'm not talking about  
13 his policies and procedures and what they do  
14 in the normal course. I want to know with  
15 this particular situation, was it USEPA that  
16 was taking over the remediation of the Avon  
17 drainage ditch.

18           MR. COHEN: What time frame are you  
19 talking about? Object to the form of the  
20 question. The witness is doing his best to  
21 answer his ambiguous questions but without a  
22 time frame, he can't do it.

23           HEARING OFFICER SUDMAN: Would a time

24 frame help you answer the question?

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1 THE WITNESS: We could try.

2

3 BY MR. JAWGIEL:

4 Q. Subsequent to your investigation --  
5 which I believe was only one day, wasn't it?

6 A. That I recall, yes.

7 Q. Okay, so you were out at this. You  
8 were not familiar with this site other than the day  
9 you went out there; is that right?

10 A. I believe I was out there previous,  
11 but there's nothing in the record that would prove  
12 that I was out there.

13 Q. Well, when was that?

14 A. I don't know. I can't recall.

15 Q. Okay. Why were you out there?

16 A. For responding to an oil spill.

17 Q. Where?

18 A. Avon Fremont ditch.

19 Q. Was it north of this spill or south of  
20 the spill?

21 MR. MURPHY: Objection.

22 BY MR. JAWGIEL:

23 Q. When you were first on the site, did  
24 you believe -- responding to an oil spill, was it

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1 north of this spill or south of the spill?

2 A. If I could explain, in my memory, I  
3 think I was out there more than once, but in fact I  
4 may have only been out there on the 19th when it was  
5 noted in Betty Lavis' report.

6 Q. Okay. So as we sit here today, you  
7 have no recollection specifically of being out there  
8 but it may or may not have happened?

9 A. That's correct.

10 Q. Now, other than that one day that you  
11 were out there doing your investigation on April  
12 19th of 1995, after that period of time, did you  
13 have the USEPA -- or did the USEPA take over the  
14 remediation of this spill?

15 A. I believe -- well, in the file it  
16 indicates that there is going to be a joint  
17 follow-up by both the USEPA, and I believe the Huff  
18 and Huff report states that they would contact the  
19 leaking underground storage tank program.

20 Q. Well, I'm not asking what was in the  
21 memo. I'm asking you what practically happened.

22 From a practical standpoint you have not been able  
23 to tell us anything that was done until 1997, I  
24 believe, as far as going out to the site by the

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1 Illinois EPA.

2 My question is very simple.

3 Between your visit of April 19, 1995 and the visit  
4 back in December of 1997, did the Illinois EPA do  
5 anything to manage the remediation of the spill in  
6 the Avon drainage ditch?

7 A. Not to my direct knowledge.

8 Q. And in your experience, sir, given  
9 that gap of period of time, has it been your  
10 experience then that the Illinois EPA was deferring  
11 to the USEPA with respect to remediation of this  
12 site?

13 A. There are other programs within the  
14 agency that might be involved in a situation like  
15 this.

16 Q. Are you aware of any other programs in  
17 your agency that were involved in this situation?

18 A. Yes.

19 Q. Which?

20 A. The leaking underground storage tank

21 program.

22 Q. Okay. Have you reviewed any reports  
23 from the leaking underground storage program?

24 A. No, I haven't.

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1 Q. Do you know whether or not after the  
2 storage tank was taken out that there was any  
3 testing done of the soil around the storage tank to  
4 determine the content?

5 A. No, I do not.

6 Q. Do you know whether or not -- what was  
7 the extent of the oil present in this leaking oil  
8 storage tank or whether or not it was determined  
9 whether or not it was the source of the actual leak  
10 after the tank was taken out?

11 MR. COHEN: Object to the form of the  
12 question.

13 HEARING OFFICER SUDMAN: I don't  
14 recall.

15 MR. COHEN: Excuse me.

16 THE WITNESS: I'm sorry.

17 HEARING OFFICER SUDMAN: When there's  
18 an objection pending, Mr. Klopke, you can  
19 just hang on for a second.

20 THE WITNESS: I'm sorry.

21 HEARING OFFICER SUDMAN: What exactly  
22 do you object to?

23 MR. COHEN: At least compound. I  
24 couldn't count all the different ones.

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1 MR. JAWGIEL: Well, if he can't count  
2 them, then he can't bring them.

3 (Laughter.)

4 I'll rephrase the question.

5 HEARING OFFICER SUDMAN: Okay.

6 BY MR. JAWGIEL:

7 Q. Are you aware that after the -- of any  
8 conclusion whether or not the leaking storage tank  
9 was the actual source of contamination in the Avon  
10 drainage ditch after the tank was taken out and the  
11 area around the tank was analyzed?

12 A. I do not have any direct knowledge of  
13 that.

14 Q. So your knowledge is based upon --  
15 what was the date of the report from Huff and Huff?

16 A. May 1.

17 Q. Of what year?

18 A. 1995.

19 Q. Okay. And the report we have here in  
20 Exhibit 25 was May 3, 1995. So your extent of what  
21 was going on in this site ended basically in May of  
22 1995; is that correct?

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

24 Q. Okay. So you don't know what may or

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1 may not have happened after that time as far as what  
2 tests were taken, what conclusions were made, what  
3 was the determination as far as what was present on  
4 the SVA site; is that correct?

5 A. That's correct.

6 Q. Are you aware of a landfill that was  
7 in this area?

8 A. No, I'm not aware.

9 Q. So you don't know one way or the  
10 other; is that correct?

11 A. I don't recall visiting a landfill  
12 back then.

13 Q. Whether you visited or not, you don't  
14 know if there was one present?

15 A. That's correct.

16 MR. MURPHY: Madam Hearing Officer,  
17 I'm going to ask -- I'm going to show an

18 objection that if counsel does not perfect  
19 his impeachment on this issue, he cannot  
20 simply interject facts that may or might have  
21 existed.

22 If he's going to be talking about  
23 this landfill and it's going to be relevant,  
24 he's got to later on show that it existed,

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1 otherwise, I'm going to move to strike this  
2 line of questioning.

3 MR. JAWGIEL: Well, isn't that sort of  
4 putting the cart before the horse, your  
5 Honor? If he's going to move to strike it  
6 but I tie it in later into my case, it's  
7 going to be very difficult.

8 So yes, I will tie it in my case.  
9 I will ask people who do have knowledge of  
10 what is actually in this area but at this  
11 point in time, it's cross-examination. I'm  
12 given a liberal birth.

13 HEARING OFFICER SUDMAN: Okay. Your  
14 objection is noted. I'll allow you to ask it  
15 for now.

16 BY MR. JAWGIEL:

17 Q. Has it been your experience, sir, that  
18 farms have heating oil on their premises?

19 A. Yes.

20 Q. Has it been your experience that farms  
21 have fertilizer on their premises?

22 A. Yes.

23 Q. Has it been your experience that farms  
24 generally have diesel fuel on their premises?

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1 A. Yes.

2 Q. Did you check the history of the use  
3 of the SVA site?

4 A. I don't recall doing that.

5 Q. Are you aware of any prior violations  
6 by SVA of any environment laws?

7 A. Not directly.

8 Q. Are you aware of any economic gain SVA  
9 in your opinion would have had by having oil  
10 discharge in the manner in which you indicated  
11 either through a leaky underground storage tank or  
12 this drain tile?

13 MR. MURPHY: Madam Hearing Officer,  
14 I've got an objection. This is beyond the  
15 scope of direct, beyond the scope of his

16 expertise, and this is not the witness for  
17 this.

18 MR. JAWGIEL: If he talks about  
19 responsible parties I want to flesh out what  
20 responsible parties are. A responsible party  
21 would be a party that undertook something and  
22 part of this claim is that they have some  
23 sort of economic gain by doing so.

24 HEARING OFFICER SUDMAN: Would you

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1 repeat the question?

2 MR. JAWGIEL: Sure.

3 BY MR. JAWGIEL:

4 Q. Are you aware of any economic gain  
5 Skokie Valley Asphalt would have gained or would  
6 have had by allowing or having fuel -- strike the  
7 question.

8 Are you aware of any economic gain  
9 Skokie Valley Asphalt would have had by having a  
10 leaky underground storage tank or a drain tile with  
11 oil in it?

12 HEARING OFFICER SUDMAN: To address  
13 your objection, I'm going to -- I agree this  
14 is probably not within his scope of

15 expertise, but he is a professional. I'm  
16 going to allow him to answer it and the Board  
17 can weigh -- I think this goes to weight  
18 rather than admissibility.

19 So please answer the question.

20 THE WITNESS: As far as it leaking out  
21 of the tank, if there's a cost associated  
22 with repairing that tank, there might be some  
23 benefit to allowing it to drain, but that  
24 would be the only economic benefit I could

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1 see.

2

3 BY MR. JAWGIEL:

4 Q. Well, with respect to allowing the  
5 tank to drain, isn't it true that if the tank is  
6 leaking, you've got to refill it faster in your  
7 experience?

8 A. It depends on how fast the release is  
9 and what the cost is in buying the product versus  
10 replacing the tank to hold it.

11 Q. Do you have any information that  
12 Skokie Valley at the time of your investigation on  
13 April 19, 1995 actually knew that its tank was

14 leaking?

15 A. No.

16 Q. Are you aware of any report that makes  
17 the conclusion that above ground storage tanks were  
18 a source of the actual contamination into the Avon  
19 drainage ditch?

20 A. No.

21 Q. When you went on Mitch's Green Thumb  
22 Landscaping facility, was this a facility that had  
23 trucks and equipment where they would use gasoline,  
24 oil, diesel when you were there that you could see?

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1 A. I believe I recall seeing a typical  
2 landscaping operation which would have vehicles  
3 there.

4 Q. Did you inquire or investigate whether  
5 or not they had underground storage tanks with any  
6 sort of the oils?

7 A. That, I don't recall.

8 Q. Are you aware of any of the substances  
9 that you saw in the Avon drainage ditch at the time  
10 of your investigation of April 19, 1995 actually  
11 making their way into the  
12 Third Lake area?

13           A.       Other than the drainage ditch, I did  
14 not inspect Third Lake at that time that I recall.

15           MR. JAWGIEL:   Okay.  That's all I  
16 have.  Thank you, sir.

17           HEARING OFFICER SUDMAN:  Mr. Murphy,  
18 any redirect?

19           MR. MURPHY:  Just a few.

20           R E D I R E C T - E X A M I N A T I O N

21 BY MR. MURPHY:

22           Q.       You testified that Skokie Valley  
23 Asphalt Company was an asphalt company, correct?

24           A.       Correct.

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1           Q.       To your knowledge, did they use trucks  
2 as part of their operations?

3           MR. JAWGIEL:  Your Honor, that goes  
4 beyond the scope of my cross-examination.

5           MR. MURPHY:  It does not.  I'm trying  
6 to tie in Mitch's Green Thumb with the trucks  
7 that are on that site.

8           MR. JAWGIEL:  I did not go into the  
9 actual operation of Skokie Valley Asphalt at  
10 all in my cross-examination.  I did not ask  
11 him what Skokie Valley did, what sort of

12 equipment they used, anything along those  
13 lines.

14 HEARING OFFICER SUDMAN: I know that,  
15 but you did ask him about the presence of  
16 trucks nearby.

17 MR. JAWGIEL: The presence of trucks  
18 on a different area has nothing to do with  
19 this question. He's asking the use of those  
20 types of vehicles in Skokie Valley and I  
21 didn't go into that area. He also went into  
22 the area of what was present in other  
23 adjoining properties, so I was just following  
24 up on that line of questioning.

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1 MR. MURPHY: I'm just trying to  
2 distinguish contamination coming from  
3 different sites than from this site. And if  
4 the substance is diesel fuel, trucks being  
5 operated on Skokie Valley are just as  
6 relevant as trucks operating in Mitch's  
7 Green Thumb.

8 HEARING OFFICER SUDMAN: I agree. He  
9 may answer the question.

10 THE WITNESS: Could you repeat it?

11 MR. MURPHY: Sure.

12 BY MR. MURPHY:

13 Q. Did Skokie Valley Asphalt Company use  
14 commercial, industrial grade trucks as part of their  
15 operation --

16 MR. JAWGIEL: I'm going to object  
17 to -- without foundation and a time frame.

18 BY MR. MURPHY:

19 Q. -- to your knowledge?

20 A. Yes.

21 Q. Mr. Klopke, is it your experience that  
22 people or companies that are not truly responsible  
23 for the release, number one, say that they found a  
24 leaking underground storage tank on their property

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1 and then take responsibility to address the  
2 environmental problems caused by that release?

3 MR. JAWGIEL: Your Honor, objection.  
4 That goes beyond the scope of my direct  
5 examination. There has to be a foundation  
6 laid.

7 MR. MURPHY: He talked on and on about  
8 what significance of what happened or what  
9 was documented in tab 25, the USEPA report,

10 and this runs in the same direction. This is  
11 taken right from that report.

12 HEARING OFFICER SUDMAN: I agree. The  
13 witness may answer.

14 THE WITNESS: Repeat the question,  
15 please.

16 MR. MURPHY: Sure. I'll do it slowly.

17 MR. JAWGIEL: If you could just note  
18 my objection for the record.

19 HEARING OFFICER SUDMAN: Your  
20 objection is noted, sir. Thank you.

21 BY MR. MURPHY:

22 Q. Is it your experience that people or  
23 companies that are not truly responsible for the  
24 release say to the regulatory agencies that they

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1 found a leaking underground storage tank on the site  
2 and then take responsibility for whatever  
3 environmental problems are caused by that release?

4 A. No.

5 MR. MURPHY: Nothing further.

6 R E C R O S S - E X A M I N A T I O N

7 BY MR. JAWGIEL:

8 Q. Sir, based on your investigation, are

9 you aware of any environmental impact from the  
10 discharge into the Avon drainage ditch?

11 MR. MURPHY: Madam Hearing Officer, I  
12 have an objection as to relevance. There  
13 is -- environmental impact is not a part of  
14 this case. It is just simply not a part of  
15 this case.

16 Now they can try to make it that  
17 way and they have tried in the past, but all  
18 that matters is that there was a discharge  
19 into the waters of the State of Illinois that  
20 caused, threatened or allowed water  
21 pollution, not whether there was an impact.

22 MR. JAWGIEL: Your Honor, it goes to  
23 42H-A. It goes to the gravity and duration  
24 of the impact -- of the offense.

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1 HEARING OFFICER SUDMAN: And which  
2 line of questioning for his redirect does it  
3 go to?

4 MR. JAWGIEL: He said take  
5 responsibility for damaging the environment  
6 and in his question -- in the last question  
7 that he asked he said, has it been your

8 experience that people who have a -- don't  
9 have a leaky storage tank and don't take  
10 responsibility for cleaning up the  
11 environment.

12 HEARING OFFICER SUDMAN: And what was  
13 your question again?

14 MR. JAWGIEL: My question is was there  
15 any environmental impact from the spill into  
16 the Avon drainage ditch.

17 MR. MURPHY: Can the record also show  
18 that I do object?

19 HEARING OFFICER SUDMAN: Yes. The  
20 record will show that you object.

21 You may give your professional  
22 opinion on that if you know.

23 THE WITNESS: Well, the sheen on the  
24 body of water in itself is a violation of the

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1 Act -- I think, it's 12A. There's also the  
2 odor problem which has -- you know, which is  
3 a possibility of another other violation.

4 Material can impact, you know,  
5 banks and soils downstream and those are the  
6 only impacts I can think of.

7 BY MR. JAWGIEL:

8 Q. But my question is, was there actually  
9 an environmental impact from this spill, not what it  
10 could or couldn't have done or possibly have done or  
11 anything along those lines? My question is very  
12 specific. Was there actually an environmental  
13 impact with respect to this spill?

14 MR. MURPHY: Objection, vague and  
15 outside the scope.

16 MR. JAWGIEL: I don't think it's vague  
17 at all. I'm trying to get a clarification  
18 and an answer to my question.

19 HEARING OFFICER SUDMAN: Well, I think  
20 he just answered. I mean, he said there was  
21 sheen and odor. I don't know what more  
22 you're fishing for. I think he's answered  
23 it.

24 MR. JAWGIEL: I'm really not fishing

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1 for anything. What I'm really asking him to  
2 do is answer my question. He said, well,  
3 there could have been. I want to know in his  
4 investigation did he come to any conclusion  
5 based on his position that there was an

6 environmental impact from this particular  
7 contamination; that's all I'm asking. It's a  
8 very simple question.

9 HEARING OFFICER SUDMAN: Okay. Would  
10 you please repeat your answer? I thought you  
11 had answered it.

12 THE WITNESS: I would say yes, the  
13 impact is the sheen and the odor.

14 BY MR. JAWGIEL:

15 Q. Okay. Nothing else?

16 A. Not that I'm aware of.

17 MR. JAWGIEL: Okay. That's all.  
18 Thank you.

19 HEARING OFFICER SUDMAN: Anything  
20 further for you, Mr. Murphy?

21 MR. MURPHY: No.

22 HEARING OFFICER SUDMAN: Are we done  
23 with this witness?

24 MR. COHEN: Yes.

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1 HEARING OFFICER SUDMAN: Okay. Thank  
2 you, Mr. Klopke, you may step down.

3 (Witness excused.)

4 MR. COHEN: Can we go off the record?

5 HEARING OFFICER SUDMAN: Yes. Let's  
6 go off the record.

7 THE REPORTER: Okay.

8 (Whereupon, a discussion  
9 was had off the record.)

10 HEARING OFFICER SUDMAN: Okay. We'll  
11 go back on the record now and the People may  
12 call their next witness.

13 MR. COHEN: Your Honor, at this time,  
14 the People would call Richard Frederick.

15 HEARING OFFICER SUDMAN: Would the  
16 court reporter please swear in the witness?

17 THE REPORTER: Sure.

18 (Witness sworn.)

19 WHEREUPON:

20 RICHARD JOHN FREDERICK  
21 called as a witness herein, having been first duly  
22 sworn, deposeth and saith as follows:

23 D I R E C T E X A M I N A T I O N

24 BY MR. COHEN:

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1 Q. Sir, would you please state you full  
2 name and spell your last name?

3           A.       Richard John Frederick,  
4 F-R-E-D-E-R-I-C-K.

5           Q.       Mr. Frederick, what's your position  
6 with Skokie Valley Asphalt Company, Incorporated?

7           A.       Vice president in charge of  
8 construction.

9           Q.       Were you part owner of the business?

10          A.       Yes.

11          Q.       What percent of the business did you  
12 own?

13          A.       Fifty percent.

14          Q.       Who owned the other 50 percent?

15          A.       My brother Larry.

16          Q.       What was his position or title?

17          A.       He was the president.

18          Q.       When Skokie Valley Asphalt was in  
19 business, did you and your brother have exclusive  
20 control over the business?

21                   MR. JAWGIEL: Your Honor, I'm going to  
22 object, legal conclusion. That's for a legal  
23 conclusion, exclusive control. First of all,  
24 form of the question.

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1                   How can both of them have

2 exclusive control? Exclusive in and of  
3 itself means individual. But along with  
4 that, it asks for a legal conclusion.

5 HEARING OFFICER SUDMAN: Would you  
6 like to rephrase the question?

7 BY MR. COHEN:

8 Q. Were you and your brother in charge of  
9 the whole operation?

10 MR. JAWGIEL: Again, I'm going to  
11 object.

12 HEARING OFFICER SUDMAN: I'm going to  
13 allow it. I think it's fine.

14 THE WITNESS: Along with other foremen  
15 and superintendents.

16 BY MR. COHEN:

17 Q. What type of business was Skokie  
18 Valley Asphalt?

19 A. An asphalt paving contractor.

20 Q. Where was your business located?

21 A. Grayslake was the main office and we  
22 had a plant out in McHenry, Illinois.

23 Q. What was the address of the Grayslake  
24 location?

1           A.       768 South Lake Street.

2           Q.       And that's in Lake County, Illinois,

3 correct?

4           A.       Yes.

5           Q.       What did you do at the Grayslake

6 location?

7           A.       We had our office, our estimating --

8 you know, the office and all the people that did the

9 billing and a maintenance garage to work on various

10 equipment and trucks and we kept some asphalt

11 liquid, asphalt primer coats and a couple of tanks

12 there.

13          Q.       Is that also where you had dispatched

14 the trucks from?

15          A.       Yes.

16          Q.       Did you also storage some trucks at

17 that facility?

18          A.       Yeah, trucks and equipment.

19          Q.       How long was Skokie Valley Asphalt at

20 the Grayslake location?

21          A.       I think since 1978.

22          Q.       And was there a business at that same

23 location before Skokie Valley Asphalt?

24          A.       Yes, sir.

- 1 Q. What business was that?
- 2 A. It was another asphalt company.
- 3 Q. Is that Libertyville Asphalt?
- 4 A. Yes.
- 5 Q. Who owned that business?
- 6 A. My parents.
- 7 Q. And did you work for them while it was  
8 Libertyville Asphalt?
- 9 A. For a while, yes.
- 10 Q. Did you ever make asphalt at the  
11 location in Grayslake?
- 12 A. Yes. We had an asphalt plant there.
- 13 Q. Do you recall when you stopped making  
14 asphalt at the Grayslake location?
- 15 A. 1981.
- 16 Q. What were your responsibilities as  
17 vice president in running Skokie Valley Asphalt?
- 18 A. I helped with estimating and getting  
19 the work, you know, completed, dealing with various  
20 superintendents and foremen to get jobs done.
- 21 Q. Now, when you're talking about these  
22 jobs, these are jobs, off-site road construction  
23 jobs?
- 24 A. Right, parking lots, road

1 construction.

2 Q. Your primary function was construction  
3 management, is that a good way to say it?

4 A. Yes.

5 Q. And your responsibilities included  
6 personnel, equipment and materials, scheduling and  
7 budgeting for that type of work, correct?

8 A. Right.

9 Q. You also were involved in the hiring  
10 and control of all the employees and you reviewed  
11 and approved the timecards, union contracts, and had  
12 personnel relation issues, correct?

13 A. Right, but not only employees. In  
14 fact, me and my brother share that -- we shared that  
15 duty.

16 Q. You also had the responsibility for  
17 all the equipment matters, purchasing and  
18 maintaining the equipment, daily review of equipment  
19 matters with outside maintenance shops?

20 A. Right.

21 Q. Your duties also included scheduling  
22 of all jobs, employees, and subcontractors?

23 A. Some. Some of that was along with  
24 other estimators and my brother. I mean, it was all

1 shared but I did probably the majority of that.

2 Q. Okay. And I believe you also had  
3 responsibility for traffic control and safety  
4 matters out on job sites?

5 A. Right.

6 Q. And you also had responsibility for  
7 reviewing and approving contract items, bills, and  
8 invoices?

9 A. Some, yes.

10 Q. What were your brother's  
11 responsibilities as president of Skokie Valley  
12 Asphalt?

13 A. He did more of the office things,  
14 estimating, you know, whatever, insurance, banking  
15 matters, things like that.

16 Q. Most of his stuff was related to  
17 financial matters?

18 A. Yes, and estimating.

19 Q. Maybe you should explain on the record  
20 what you mean by estimating?

21 A. Well, when you bid a job, I mean, he  
22 would have like estimators working for him and he  
23 would work with -- well, not in any private work, in  
24 sales. They put a bid together, you know, the

1 estimating, what it's going to cost and he was more  
2 involved in that.

3 Q. Did your brother also do work as a  
4 liaison with the banks and suppliers and purchasing  
5 materials, making payments, managing payroll, and  
6 reviewing accounts receivable and accounts payable?

7 A. Right.

8 Q. Did his duties also involve on-site  
9 meetings, reviewing on-site work, daily consultation  
10 with foremen and engineers, liaison with state and  
11 county, federal officials and private owners for  
12 whom work was performed?

13 A. Right.

14 Q. Now, I believe you were in the hearing  
15 room when you heard Mike Garretson's testimony about  
16 the NPDES permit that Skokie Valley Asphalt had?

17 A. Yes.

18 Q. And you're familiar that Skokie Valley  
19 Asphalt did have an NPDES permit?

20 A. Yes, I am.

21 Q. And who signed the DMRs or the  
22 discharge monitoring reports that were submitted to  
23 the Illinois EPA on behalf of Skokie Valley Asphalt  
24 Company?

1           A.       I believe I signed them.  If I wasn't  
2 there, I'm sure my brother signed them but I  
3 probably signed them most of the time.

4           Q.       Can you describe for the Board the  
5 procedure Skokie Valley Asphalt Company used to put  
6 the data together for the discharge monitoring  
7 reports and if I use DMRs, you'll understand that  
8 term?

9           A.       Yeah.

10                       Basically when we got the permit,  
11 I remember we set up with like a couple of our  
12 dispatchers out in the front, one being more  
13 responsible for it, and he would have somebody in  
14 our yard, a laborer or somebody, go down and get the  
15 water sample from the discharge pipe and deliver it  
16 over to the Northshore Sanitary District at that  
17 time.

18                       They did our testing of the water  
19 and they would mail -- I believe mail us back a  
20 report.  We would give it to the dispatcher that was  
21 in charge of it -- that would get funneled back to  
22 him -- and he would fill out the report and have me  
23 sign it and mail it down to the EPA.

24           Q.       Could you please tell the Board the

1 name of that employee who usually took care of  
2 filling out the DMR?

3 A. Bob Christiansen.

4 Q. Now, and how often do you recall that  
5 Bob Christiansen was typically bringing you a DMR to  
6 sign?

7 A. Well, he was kind of -- I mean, we  
8 left him in charge, but I guess he was supposed to  
9 do it every month.

10 Q. What would you do when Bob  
11 Christiansen would bring you a DMR report to sign?

12 A. I would look at it and look at  
13 the -- there were three things, I believe, three or  
14 four that, as you've talked about, the suspended  
15 solids, oil, grease, and maybe pHs -- does that  
16 sound right? And I had a --

17 Q. Would it help if you looked at one of  
18 the forms?

19 A. I can. I mean, I don't know if I need  
20 to or not because I would answer one other thing,  
21 total suspended solids, it was when we would get a  
22 big storm. And on our property, we have a farm  
23 field that's 40 acres that flows into our retention

24 basin, plus our ten acres and I asked people -- I

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1 think I asked Jim Huff, and I might have asked  
2 somebody at the Illinois EPA, is there a problem  
3 with total suspended solids? And they said, not  
4 when you have a big storm.

5 I mean, if you can see storm water  
6 coming off of a 40-acre field that's just plowed for  
7 the winter, that brings dirt and everything into our  
8 ponds and are filthy and so we just always let them  
9 go.

10 I don't believe we ever were over  
11 on oil, grease, and pH. But as far as -- I know you  
12 had asked that before and that was talked about up  
13 here and we discussed that. I'd sign them and mail  
14 them on to the EPA.

15 Q. Now, what do you mean by that you  
16 would check for the three things in the DMR when  
17 Bob Christiansen would bring them to --

18 A. I always would just go get them. I  
19 might not have looked at them all the time. If I  
20 had time, I would look at them.

21 Q. Would you just look at them on the DMR  
22 reports and then sign the report or would you do

23 anything else?

24 A. That's all I had ever done. And I

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1 probably didn't look at them all the time. Bob was  
2 mainly the one who was in charge of doing that. I  
3 kind of just signed them -- if I was in a hurry, I  
4 would just sign them. Bob was the responsible  
5 person.

6 Q. Did you yourself ever do anything to  
7 determine whether the information contained on the  
8 DMR reports filled out by Bob Christiansen was  
9 accurate?

10 A. No.

11 Q. Did you ever check the report or  
12 letter that you got back from the Northshore  
13 Sanitary District to see whether Bob Christiansen  
14 had written that information down correctly on the  
15 DMR?

16 A. Not that I can remember. No, sir.

17 Q. There's a big white binder in front of  
18 you. Why don't we go to the front of that binder  
19 and if you would just flip to tab one behind the tab  
20 there, do you recognize that document?

21 A. I mean, I think this is a copy of

22 our -- I mean, I'm sure that I've seen this.

23 Q. Is that a copy of the NPDES permit?

24 A. I'm sure that it is, yes.

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1 Q. Directing your attention to  
2 Complainant's Exhibit No. 2, do you recognize that  
3 document?

4 A. It's a -- what do you call them?

5 Q. A DMR?

6 A. Yeah.

7 Q. Is that the DMR that Skokie Valley  
8 Asphalt submitted?

9 A. I mean, they look like it. I would  
10 sign these usually.

11 Q. Is that your signature at the bottom?

12 A. Yes.

13 Q. And is that your name at the bottom of  
14 the page?

15 A. Yes.

16 Q. Maybe we can just flip through these  
17 carefully. If something doesn't look right, you can  
18 bring it to my attention.

19 Complainant's Exhibit No. 3, is  
20 that also a DMR submitted by Skokie Valley Asphalt

21 Company?

22 A. Yes.

23 Q. And is that your signature at the  
24 bottom of that page?

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1 A. Yes, it is.

2 Q. Complainant's Exhibit No. 4 is a DMR  
3 submitted by Skokie Valley Asphalt Company?

4 A. Yes.

5 Q. And your name appears at the bottom of  
6 that page?

7 A. Yes.

8 Q. Complainant's Exhibit No. 5, another  
9 DMR with your name at the bottom of the page?

10 A. Yes.

11 Q. Complainant's Exhibit No. 6, did you  
12 have anything to do with the NPDES permit renewal  
13 application?

14 A. Not that -- my brother and I did talk  
15 about it, so I guess I did a little bit, yes.

16 Q. Okay. Your signature is not on that  
17 document, is it?

18 A. No.

19 Q. Whose signature does appear on that

20 document?

21 A. Larry's. It's my brother's.

22 Q. Directing your attention to People's  
23 Exhibit No. 7, do you recognize that document?

24 A. I'm sure that I saw it, but I mean,

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1 it's on our letterhead to the IEPA.

2 Q. And does that relate to submission of  
3 the additional information related to your NPDES  
4 permit renewal application? I think you might see  
5 that at the top of page 1.

6 A. Yes, I guess so.

7 Q. Do you not recall anything about  
8 needing to supply the Illinois EPA with additional  
9 information about the permit renewal application?

10 A. All I know -- I mean, the only thing  
11 that I remember really discussing with my brother is  
12 that we were told that we were going to be able to  
13 go in under a blanket permit and that's what  
14 our -- that's what we felt we were going to be able  
15 to do.

16 Q. But do you remember the Illinois EPA  
17 asking you --

18 A. I don't remember that.

19 Q. Okay.

20 A. No, I don't.

21 Q. Okay. After you were issued the NPDES

22 permit in April, May of 1986, did you start

23 submitting DMR reports at that time?

24 A. I remember we had to get our -- I

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1 think we had to get our discharge under the railroad

2 tracks, so I don't think we started right away. I

3 think we started when we started discharging.

4 I can't tell you when that was. I

5 think we had the permit for a little while before we

6 started discharging.

7 Q. Let me direct your attention to

8 Complainant's Exhibit No. 26. Do you recognize that

9 exhibit?

10 A. Somewhat. I mean, I think it tells

11 why we -- yes, I signed this.

12 Q. Can you describe for the record what

13 that is?

14 A. It's a letter to the IEPA, I believe,

15 that we didn't do any reports because we weren't

16 discharging into the area that -- where we had the

17 permit. We were in the process of putting our

18 discharge tile under the tracks.

19 Q. And what is the date of that letter?

20 A. November 9, 1988.

21 Q. And who signed that letter on behalf  
22 of Skokie Valley Asphalt?

23 A. I did.

24 Q. Now, one thing that caught my

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1 attention under there is that your title in that  
2 letter is --

3 A. President.

4 Q. -- president.

5 Was that a typo?

6 A. Typographical error.

7 Q. Okay. Is that a true and correct copy  
8 of the letter?

9 A. I believe that it is, sure. I think  
10 this tells about when we finished our piping when  
11 Metra was buying the railroad, I believe, or  
12 Milwaukee Road at that time and we had a lot of  
13 trouble getting a permit, auger, under the tracks.

14 Q. Let me direct your attention to  
15 Complainant's Exhibit No. 27. It might be easier if  
16 you open that binder all the way.

17 A. I can read it.  
18 Q. Do you recognize that?  
19 A. Right.  
20 Q. Can you describe for the Board or the  
21 record what that is?  
22 A. It's a letter from Bob Christiansen  
23 about why we didn't file to report some discharge  
24 monitoring and it sounds like -- I mean, we did.

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1 Bob had a heart attack. There were periods in there  
2 where we had new people involved and whether or  
3 not -- this was a letter stating that we didn't file  
4 some of these reports.  
5 Q. And what is the date of that letter?  
6 A. January 17, 1990.  
7 Q. And does that appear to be an accurate  
8 copy of that letter?  
9 A. I would say, sir, yes.  
10 Q. And Bob Christiansen --  
11 A. Yes.  
12 Q. -- was the man you described  
13 earlier --  
14 A. Right.  
15 Q. Could you try and let me finish my

16 question?

17 A. I'm sorry.

18 Q. The court reporter can only take one  
19 of us talking at the same time.

20 HEARING OFFICER SUDMAN: Yes.

21 Thank you.

22 BY MR. COHEN:

23 Q. Bob Christiansen was the man you  
24 explained earlier who would normally transpose the

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1 information from the Nort shore Sanitary District --

2 A. Right.

3 Q. -- and bring the DMR for your  
4 signature, correct?

5 A. Right.

6 Q. Do you recall on your site in  
7 Grayslake there ever being a gasoline pump?

8 A. Oh, sure.

9 Q. Was there still one there when you  
10 sold the business?

11 A. Yes.

12 Q. Was there ever a gasoline pump on the  
13 site that was removed?

14 A. I mean, we had an above ground pump

15 and -- I mean, when we, you know, had to go to  
16 double wall tanks and everything, we put a whole new  
17 system in.

18 Q. Was there ever a time where you had a  
19 gasoline pump with an underground storage tank?

20 A. It could have been, yes. I mean, that  
21 could have been before our time there.

22 Q. Do you recall there being one during  
23 Skokie Valley Asphalt?

24 A. Not when Skokie Valley was there --

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1 well, there could have been one but -- yes, I  
2 believe there could have been.

3 Q. I think it might have been on the  
4 south end?

5 A. It could be, yes.

6 Q. And do you recall when Skokie Valley  
7 would have removed that pump and underground storage  
8 tank?

9 A. Probably sometime in the early '80s.

10 Q. You mentioned earlier that Skokie  
11 Valley Asphalt stopped producing asphalt at the  
12 Grayslake location I think you said 1981 or 1982?

13 A. Right.

14 Q. What did Skokie Valley Asphalt have to  
15 do to dismantle that operation?

16 A. Not much. I mean, it's like a big  
17 erector set. You take the asphalt and it gets --  
18 they put it down -- it comes in in pieces and it  
19 goes out in pieces.

20 Q. Maybe for those of us who don't know  
21 much about asphalt, can you describe what pieces  
22 comprised the plant that you had to take down?

23 A. There were bins that the aggregate --  
24 before it's dried there's like five or six bins --

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1 Q. I'm sorry?

2 A. They're bins. They're open bins that  
3 you dump into with an end-loader.

4 Q. Bins?

5 A. Bins.

6 Q. B-I-N-S?

7 A. Right.

8 And with the conveyor underneath  
9 that, the conveyor goes up into a rotary dryer that  
10 dries the aggregate sand and gravel and that  
11 carries -- there's an elevator that carries it up to  
12 the top of the plant where there's a screen because

13 there's different sizes of the -- large stones,  
14 small stones and sand and they -- that screen  
15 separates those into bins that are in this plant.

16                   This plant goes up and down --  
17 maybe it's 80 or 90 feet tall -- and that goes into  
18 bins. And underneath those bins, there's a weigh  
19 hopper and you draw out a certain amount for each  
20 batch of asphalt into that weigh hopper of the  
21 aggregate and drops it into the pug mill. There's  
22 also --

23           Q.       Excuse me. What is a pug mill?

24           A.       That's the mixer; it's like your egg

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1    beater.

2                   And then there's the asphalt tanks  
3 over here (indicating) that have a pump that go up  
4 to a weigh bucket and that weigh  
5 bucket -- it's on a scale also and that pumps it  
6 into the weigh bucket.

7                   You get so much asphalt in the  
8 weigh bucket and that dumps it into the pug mill  
9 with the -- that's the liquid. It's about 95  
10 percent sand and gravel, five percent liquid  
11 asphalt, mixes it up, drops it into the truck.

12 Q. Now, we heard from, I believe,  
13 Mr. Klopke and Mr. Kallis that there are above  
14 ground storage tanks for liquid asphalt that --

15 A. Right. Those are different kind of  
16 tanks. The other tanks for the asphalt cement were  
17 removed when we sold the plant in 1981 or -- it was  
18 right around '81 or '82.

19 Q. How did you fuel the asphalt plant  
20 when it was --

21 A. Gas.

22 Q. -- in place?

23 A. Natural gas.

24 Q. And what was the source of that

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1 natural gas, how did you --

2 A. We have a big line coming into the  
3 yard, like an eight or ten-inch line.

4 Q. Was that the only source of fuel?

5 A. Yes.

6 Q. And how did you supply liquid asphalt  
7 at the asphalt plant?

8 A. They were in tanks, above ground  
9 tanks, and then there was lines that came out of  
10 those tanks and went up to the weigh bucket, not

11 underground, they were above ground.

12 Q. The tanks were above ground?

13 A. Yes.

14 Q. And where did the lines go?

15 A. They went right out of the tanks and  
16 up into the tower, the tower itself, and they were  
17 controlled -- it was like an automatic valve that  
18 would dump into the weigh bucket and shut off and --  
19 you know, turn on and off.

20 Q. And when you stopped producing asphalt  
21 at the site in 1982, is that also the year where you  
22 tore down --

23 A. Yes.

24 Q. -- or took down this equipment?

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1 A. Yes.

2 Q. Was this equipment then moved to the  
3 McHenry location?

4 A. No. We sold the plant at that time.  
5 We had another plant in McHenry.

6 Q. Your also heard mention that there  
7 were some underground storage tanks on your site --

8 A. Yes.

9 Q. -- through approximately 1995, 1996?

10 A. Right.

11 Q. Do you recall when Skokie Valley  
12 Asphalt stopped using those underground storage  
13 tanks?

14 A. In that period when we had hired  
15 Mr. Huff and when we had a leak in one of them, we  
16 took them all out of the ground at that time.

17 Q. Were you using those underground  
18 storage tanks up until that time?

19 A. Right. I believe there was one for  
20 the garage and two for -- one or two for waste oil  
21 in back of the garage -- I can't remember --  
22 underground.

23 Q. And what were you using waste oil for?

24 A. It would just be draining oil from the

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1 trucks and then we would have people come in and  
2 take it up and out.

3 Q. When did you dissolve Skokie Valley  
4 Asphalt Corporation?

5 MR. JAWGIEL: Objection to the  
6 relevance, your Honor.

7 HEARING OFFICER SUDMAN: Why?

8 MR. JAWGIEL: Well, I don't know what

9 the relevance is of the corporate status.

10 HEARING OFFICER SUDMAN: Well, you  
11 have actually a standing objection on that  
12 through your motion, so I'm going to allow  
13 him to answer it.

14 THE WITNESS: We sold the company in  
15 1998 to one of our competitors.

16 BY MR. COHEN:

17 Q. And did you also dissolve the  
18 corporation in 1998?

19 A. I believe -- whatever the -- there  
20 were so many things going on at that time. I  
21 can't -- I don't know exactly what the accountants  
22 and the attorneys did to be very honest with you and  
23 I don't understand it to this day.

24 So it was a hurry deal -- a

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1 hurry-up deal and so it's kind of distasteful to me  
2 and I don't like to talk about it.

3 Q. Well, I'm sorry to bring it up but we  
4 have to.

5 A. I know we have to talk about it.

6 Q. Does Skokie Valley Asphalt Company,  
7 Incorporated still exist today?

8           A.       I don't believe so. I think our  
9 competitor has the name.

10          Q.       Who was your competitor?

11          A.       That bought the company.

12          Q.       What was their name?

13          A.       Curran Contracting.

14          Q.       But they don't use the name Skokie  
15 Valley Asphalt?

16          A.       No, they don't.

17          Q.       When you sold the company in 1998, how  
18 much did you sell it for?

19                   MR. JAWGIEL: Objection, your Honor,  
20 with respect to how much and as to relevance  
21 at this point in time.

22                   HEARING OFFICER SUDMAN: Overruled.

23                               You can answer.

24                   THE WITNESS: Well, you gave a number

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1           out. I think you said \$8 million if that's  
2 what it was. It was somewhere in that  
3 neighborhood, between the 7 and \$8 million.  
4 Most of it went to suppliers. They wrote  
5 checks directly to our suppliers, a lot of

6 it.

7 BY MR. COHEN:

8 Q. Was there a written agreement?

9 A. Oh, yeah.

10 MR. JAWGIEL: Your Honor, if you just  
11 want to note for the record we're, obviously,  
12 going to have a standing objection to --

13 HEARING OFFICER SUDMAN: Yes,  
14 Mr. Jawgiel, you have a standing objection to  
15 the relevance of the financial information.

16 MR. JAWGIEL: And Exhibit 35 just for  
17 the record.

18 HEARING OFFICER SUDMAN: Okay.

19 BY MR. COHEN:

20 Q. Mr. Frederick, I just put in front of  
21 you a red-ribbed envelope, I believe, with two thick  
22 binders in it. It's marked on the front  
23 Complainant's Exhibit 35 and it's in two volumes, if  
24 you can take a look at that --

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1 A. Okay.

2 Q. I certainly don't want you to read the  
3 whole thing.

4 A. Okay.

5 Q. The copy I have is marked volume 1 of  
6 2 and volume 2 of 2. Is yours as well?

7 A. Yes.

8 Q. Can you describe for the Board what  
9 that is?

10 MR. JAWGIEL: Your Honor, I'm going to  
11 object. Unless he views each and every  
12 document in this exhibit, how is he going to  
13 say what it is? I mean, it's absurd to hand  
14 him what appears to be about five inches  
15 thick of a document and say, well, what is  
16 it.

17 HEARING OFFICER SUDMAN: I agree. I  
18 mean, has he seen this before?

19 MR. COHEN: His signature is on it, so  
20 I'm assuming.

21 HEARING OFFICER SUDMAN: I haven't  
22 seen this before. I guess I'm not entirely  
23 sure -- is this --

24 MR. JAWGIEL: If you don't know if his

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1 signature is on every --

2 HEARING OFFICER SUDMAN: Which  
3 document are you looking at?

4 MR. JAWGIEL: In Exhibit 35, he's  
5 trying to have him identify it in mass. If  
6 he has specific documents he wants to refer  
7 him to, so be it, but to hand him five inches  
8 of documents and say, well, what is it, I  
9 mean, I think is a bit absurd.

10 HEARING OFFICER SUDMAN: I mean, if  
11 you would like, I can have him look at the  
12 table of contents for each volume and give  
13 his opinion on what it appears to be.

14 MR. COHEN: Your Honor, I don't think  
15 it's necessary; it is one document. It's a  
16 document he's familiar with his signature.  
17 If you just give me a minute, I'll be able to  
18 establish that.

19 HEARING OFFICER SUDMAN: Okay.

20 BY MR. COHEN:

21 Q. Mr. Frederick, have you seen this  
22 document before?

23 A. Yeah.

24 Q. Volume 1 of 2, on page 30 of that

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1 document is a signature page?

2 A. Right.

3 Q. Does your signature appear on this  
4 document?

5 A. Yes.

6 Q. Does this document, the asset purchase  
7 agreement between your company, the shareholders,  
8 and Curran Contracting for the sale --

9 A. I'm sure that it all is.

10 Q. Is the rest of the material in this  
11 volume and the second volume attachments to this  
12 document?

13 A. That's right.

14 Q. Directing your attention to page 4 in  
15 that same volume --

16 A. It's not numbered but is that the  
17 asset purchase agreement?

18 Q. You don't have all the page numbers on  
19 the bottom there?

20 MR. JAWGIEL: Neither do we.

21 THE WITNESS: I've got 3 and then it  
22 goes to asset purchase agreement.

23 MR. JAWGIEL: We have -- it looks like  
24 a document is numbered but there's no

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1 differentiation.

2 THE WITNESS: Here's a 4, purchase  
3 price and payment.

4 MR. JAWGIEL: Right. Purchase price,  
5 4, is numbered. Is that the one you're  
6 referring to?

7 MR. COHEN: Yes.

8 BY MR. COHEN:

9 Q. And what was the initial purchase  
10 price for Skokie Valley Asphalt?

11 A. \$8,229,000.

12 Q. As best you can tell in flipping  
13 through this document, does this appear to be a true  
14 and accurate representation of the agreement between  
15 Skokie Valley Asphalt and Curran Contractors?

16 A. That's right.

17 It doesn't have the page that  
18 shows where we paid --

19 Q. Excuse me. There's no question  
20 pending.

21 A. Strike that part.

22 HEARING OFFICER SUDMAN: Sustained.

23 MR. COHEN: Madam Hearing Officer, may  
24 I have a moment?

1 HEARING OFFICER SUDMAN: Yes.

2 BY MR. COHEN:

3 Q. Do you recall ever receiving dust  
4 complaints from the Skokie Valley Asphalt?

5 MR. JAWGIEL: Your Honor, objection to  
6 relevance. It has nothing to do with this  
7 complaint that's before us here and there  
8 hasn't even been a foundation laid.

9 HEARING OFFICER SUDMAN: What kind of  
10 complaints?

11 MR. COHEN: Dust.

12 HEARING OFFICER SUDMAN: Dust  
13 complaints?

14 MR. JAWGIEL: Same objection, your  
15 Honor. Dust complaints -- I don't know what  
16 relevance dust complaints have with respect  
17 to the cause of action. There's nothing in  
18 the complaint alleging any allegations of  
19 dust complaints.

20 HEARING OFFICER SUDMAN: What is this  
21 going towards?

22 MR. COHEN: Well, the next question  
23 will be what did you do.

24 HEARING OFFICER SUDMAN: Okay. I'll

1           give you some leeway to see where this is  
2           going.

3   BY MR. COHEN:

4           Q.     Did you ever receive dust complaints  
5           from the trucks going to the site?

6           A.     There could have been some.

7           Q.     And what did Skokie Valley Asphalt do  
8           at times to try and control the dust?

9           A.     Pave the yard.

10          Q.     Before you paved the yard, did you  
11          ever spray any materials on the site?

12          A.     Oh, yes.

13          Q.     What did you use to spray on the site?

14          A.     MC-30 prime dust control asphalt. We  
15          sold billions of gallons of it.

16          Q.     And what was that called?

17          A.     MC-30 prime asphalt, liquid asphalt,  
18          not drain oil. It was a dust control oil that was  
19          used all over the State of Illinois.

20          Q.     Do you recall how long the time period  
21          you used that to spray your lot before you paved it?

22          A.     Well, parts of it you would spray it  
23          and it would turn into paving eventually.

24          Q.     Do you recall how long a time period

1 that was for?

2 A. Maybe about three or four years.

3 MR. COHEN: I have nothing further at  
4 this time.

5 HEARING OFFICER SUDMAN: Thank you.

6 THE WITNESS: You know, aren't you  
7 going to talk about the DMRs anymore?

8 HEARING OFFICER SUDMAN: Sir, your  
9 attorney will represent you. He'll ask you  
10 all the questions you need.

11 MR. JAWGIEL: I'll ask him some  
12 questions, but we are reserving our right to  
13 call him back in our chief in case as.

14 HEARING OFFICER SUDMAN: Yes.

15 MR. JAWGIEL: And I assume he would be  
16 called as an adverse witness given the nature  
17 of the questions?

18 HEARING OFFICER SUDMAN: Yes.

19 C R O S S - E X A M I N A T I O N

20 BY MR. JAWGIEL:

21 Q. Mr. Frederick, we had talked a little  
22 bit about how much money gross the sale was of this  
23 facility, Skokie Valley Asphalt. What was the net?

24 A. You know, I can't answer that. I

1 really -- I don't know. I know that we had  
2 agreements with Faulken Materials, Meyer Materials,  
3 Seneca Petroleum, and the Bank of Waukegan that they  
4 wrote checks out at the closing to those creditors  
5 and I don't remember exactly what the net was.

6 Q. And with respect to any economic value  
7 or benefit that Skokie Valley may have received from  
8 the contamination of the Avon drainage ditch, was  
9 there any benefit to Skokie Valley in your opinion?

10 A. No.

11 Q. How much money did Skokie Valley spend  
12 in efforts to directly absorb oil off the drainage  
13 ditch?

14 MR. COHEN: Your Honor, based on the  
15 fact that counselor has reserved the right to  
16 call him as a witness in his case in chief, I  
17 didn't ask any questions on this topic.

18 HEARING OFFICER SUDMAN: What does  
19 this relate to?

20 MR. JAWGIEL: Well, they're talking  
21 about economic benefit and I think that's the  
22 whole purpose of bringing out how much they  
23 sold this business to --

24 HEARING OFFICER SUDMAN: All right.

1 Well, you opened the door.

2 MR. JAWGIEL: The door is wide open at  
3 this point.

4 HEARING OFFICER SUDMAN: Go ahead.

5 BY MR. JAWGIEL:

6 Q. How much money did Skokie Valley spend  
7 in directly attempting to absorb the oily sheen that  
8 was on the Avon drainage ditch?

9 A. I would suspect that in labor and  
10 probably some materials that it probably cost  
11 us -- maybe with our labor, probably anywhere from  
12 10 to \$15,000.

13 Q. Did Skokie Valley also undertake the  
14 removal of some underground storage tanks from this  
15 facility?

16 A. Yes.

17 Q. And how much would you estimate the  
18 cost was to Skokie Valley of removing the tanks from  
19 the site?

20 A. Probably 5 to \$7500 -- 5,000 to 7,500.

21 Q. Per tank?

22 A. Well, the whole thing I would think  
23 without the cost that we had for Jim Huff, maybe as  
24 much as \$10,000. I don't think we ever had that

1 sophisticated of an accounting system.

2 Q. Now, did you get involved in laying  
3 the asphalt for Skokie Valley?

4 A. Well, I directed people to do it. I  
5 mean, I didn't --

6 Q. Did you actually go out there and lay  
7 the asphalt back in 1995?

8 A. No.

9 Q. Did you actually go out there and lay  
10 gravel in 1995?

11 A. No.

12 Q. Did you actually go out there and load  
13 trucks?

14 A. No.

15 Q. Did you actually go out there and take  
16 samples for the discharge for the DMR?

17 A. No, I did not.

18 Q. Did you actually go out there and test  
19 the samples that were taken for the DMRs?

20 A. No, I did not.

21 Q. Did you actually fill in the DMR  
22 reports?

23 A. No.

24 Q. Did you mail the DMRs?

1 A. No.

2 Q. Did you manage the underground storage  
3 tanks that were on the facility?

4 A. Well, I mean, I didn't have anything  
5 to do with getting them filled or emptied or  
6 whatever, but I told people that, you know, what we  
7 needed to do.

8 Q. Okay. I think you already testified  
9 that there was an individual from Skokie Valley  
10 whose job it was to collect the samples for the  
11 DMRs; is that correct?

12 A. Right.

13 Q. And what was the name of that  
14 individual?

15 A. Robert Christiansen.

16 Q. Okay. And when you signed the DMRs,  
17 which are Exhibits 11 through 18, did you sign those  
18 DMRs based on the best knowledge you had regarding  
19 the accuracy of the data contained?

20 A. Yes.

21 Q. And was it your understanding, sir,  
22 that certification just asked you for your knowledge  
23 to certify when you signed that document?

24 A. Right. I mean, I assumed that

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1 everything -- that the sample that was taken was  
2 taken to Northshore Sanitary District. Bob filled  
3 out the report that we got back from them and I  
4 signed it.

5 Q. Okay. So just so it's clear, you  
6 didn't actually take the samples or fill out the  
7 form or mail the forms to the IEPA regarding the  
8 DMRs?

9 A. No, I did not.

10 Q. Why did you sign the reports, the DMR  
11 reports?

12 A. I don't know. It was just always that  
13 I signed them. I guess we signed -- or I signed a  
14 check or signed whatever. We never had anybody  
15 sign, you know, a lot of things in the company. I  
16 guess it was just -- I don't know. I just always  
17 signed them.

18 Q. Now, at some point in time, did you  
19 become aware that there was an allegation that  
20 duplicative reports had been filed by Skokie Valley?

21 A. Absolutely.

22 Q. And what, if anything, did Skokie

23 Valley do to rectify the situation?

24 A. Okay. First of all, we had hearings

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1 with probably three or four different people that  
2 worked for the -- your job is at the AG's office; is  
3 that right? -- the attorneys with the AG's office  
4 because they sent us things and they said you filed  
5 duplicate forms and you filed -- you know, whatever  
6 they were, they were wrong or whatever and we went  
7 through about three or four different -- because  
8 they would get a job there in the boom times of the  
9 '90s and then all of a sudden they were gone to a  
10 law firm. And we finally hired --

11 MR. COHEN: Your Honor, I'm going to  
12 object to the narrative.

13 THE WITNESS: Well, that's what they  
14 did; it's the truth. You can strike that if  
15 you want to.

16 HEARING OFFICER SUDMAN: Just answer  
17 the question, please.

18 THE WITNESS: Yes, ma'am.

19 And we hired an attorney. We  
20 hired --

21 MR. COHEN: Objection, no question is

22 pending.

23 HEARING OFFICER SUDMAN: Is there a  
24 question pending?

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1 MR. JAWGIEL: I asked him what did  
2 they do when they became aware of duplicative  
3 DMRs being filed?

4 THE WITNESS: Because we had -- didn't  
5 the AG's office -- if I remember right, we  
6 went down to the Attorney General's Office  
7 like five or six times in the big orange  
8 building in Chicago, so there must have been  
9 some correspondence stating that we did  
10 something wrong; this was in the '90s.

11 HEARING OFFICER SUDMAN: And I believe  
12 his question is what did you then do?

13 THE WITNESS: What did we do? We  
14 hired -- we went down and we saw these people  
15 and we hired an attorney to come with us,  
16 Murray Townselman, an attorney in Chicago.  
17 And we had like five or six meetings with an  
18 attorney by the name of Beth Williams, I  
19 believe -- they can go back and find out --  
20 and a gentleman from Springfield; he used to

21           come up on the train.

22                         We went through all of this and we  
23           found out that when Bob had his heart attack,  
24           they sent two -- and we had an agreement with

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1           these people and I'm telling the truth -- the  
2           duplicate copies that were void sent in for  
3           one month and we also -- the ones that  
4           weren't turned in, we had copies of those  
5           that were -- because we had the reports from  
6           the Northshore Sanitary District that were  
7           mailed.

8                         You know, we had in our files that  
9           were lost -- we say that they were lost down  
10          at the EPA -- we never sent them, you know,  
11          the mail through the mail. We thought we had  
12          hammered out an agreement on this portion of  
13          the DMRs with the USEPA. The attorney  
14          left -- Beth Williams left.

15                        Our attorney, Murray Townselman,  
16          had a heart attack and he sent us a thing  
17          that he was out of business and we left it  
18          lie up until now, up until we've had maybe a  
19          couple other attorneys going through this

20 thing again. And these gentlemen right here  
21 are the ones who have stayed with it and here  
22 we are today. So I mean, it's been going on  
23 since the early '90s.

24 HEARING OFFICER SUDMAN: Thank you.

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1 THE WITNESS: That's what we did

2 and --

3 BY MR. JAWGIEL:

4 Q. Hold on now.

5 A. I'm sorry.

6 Q. Now, with respect to the DMRs that  
7 were allegedly duplicative, did you actually have  
8 the testing done during those periods of time and  
9 they just didn't make it to the report?

10 A. That's what we felt and that's -- we  
11 had some -- I mean, we had a whole file. I worked  
12 on this and I don't even know what happened to it  
13 because it was so long ago, but we had reports  
14 from -- we went back to the Northshore Sanitary  
15 District, got the reports and -- because we had our  
16 copies of them and showed them to the AG's office.

17 And there were some -- there were  
18 a couple of duplicates where at the end of the month

19 Bob might have sent it out. And he was gone with  
20 a -- he had some problems and I don't want to go  
21 into those -- and Lloyd, his assistant, might have  
22 sent two copies.

23 I mean, we had an agreement there  
24 was clerical errors always and never any -- I mean,

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1 how could we gain from trying to do this because our  
2 reports never were out of kilter?

3 Q. Okay. Now, with respect to the file  
4 that you had maintained and got the reports from the  
5 testing facility, those documents were destroyed  
6 when you sold?

7 A. You know, when we sold we had so  
8 many -- there was an office and it was not the best  
9 relationship with these people. They came in and  
10 cleaned out our offices.

11 I mean, I had to take -- I was  
12 hired to kind of run this thing and what happened to  
13 those -- I can look. I mean, I don't know if we  
14 have them anymore or not because I thought at one  
15 point that was all pretty much taken care of.

16 Q. Let me show you what we'll mark as  
17 Respondent's Exhibit No. 1 for identification. Take

18 a look at that document.

19 (Witness perusing  
20 the document.)

21 A. Okay. This is some of the stuff that  
22 we worked out, yes, with Mr. Townselman and that we  
23 submitted to the Attorney General's Office back in  
24 the mid '90s.

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1 Q. Okay. And was this document the type  
2 of document that Skokie Valley would keep in the  
3 ordinary course of business?

4 A. Yes.

5 Q. And was this document particularly a  
6 document that Skokie Valley kept in its ordinary  
7 course of business?

8 A. It must have been, yes.

9 Q. And is this a true and accurate copy  
10 of the document it reflects to be?

11 A. Yes.

12 MR. COHEN: Judge, I'm going to object  
13 for a couple of reasons: First, I'd like it  
14 described a little better for the record;  
15 second, the witness has already testified  
16 that all the records have been destroyed.

17 I would assume this is a copy from  
18 our records. As long as that's clear on the  
19 record how they got this, I have no objection  
20 to him using it. But I don't think it's fair  
21 to say that, yes, this is a record we keep in  
22 the ordinary course of business when they  
23 don't have any records.

24 MR. JAWGIEL: Well, your Honor, that

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1 objection is baseless. It's not whether or  
2 not you could keep it in your records  
3 contemporaneous to this hearing. It's  
4 whether this would have been a document you  
5 kept in the ordinary course of business or  
6 whether this was a document that was kept in  
7 your ordinary course of business and whether  
8 this is a true and accurate copy.

9 The source itself has no relevance  
10 whatsoever to laying that foundation and it  
11 goes to our whole defensive latches. How are  
12 we supposed to defend ourselves unless we can  
13 find documents we did have in our business  
14 records and file alternative sources for it?

15 HEARING OFFICER SUDMAN: I'm not

16 saying it's not admitted, but I think it's  
17 worth clarifying for the record what the  
18 source was.

19 MR. JAWGIEL: Well, I don't know if  
20 he's going to know what the source was.

21 HEARING OFFICER SUDMAN: Well, then  
22 he'll say he doesn't know.

23 MR. JAWGIEL: And I don't understand  
24 the purpose of clarifying the source. I

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1 truly don't. I don't understand. Whether we  
2 get it from the AG's office or whether we get  
3 it from a different source whatsoever has no  
4 relevance.

5 This is something they would have  
6 kept in their ordinary course of business --  
7 did keep in the ordinary course of business  
8 and it's a true and accurate copy of that  
9 document.

10 HEARING OFFICER SUDMAN: I think it's  
11 relevant because there's been some testimony  
12 about not having certain records. I just  
13 think it's relevant what the source was. I'm  
14 not saying that the document is not going to

15           be admissible.

16 BY MR. JAWGIEL:

17           Q.       Do you actually know where a copy of  
18 the document came from?

19           A.       No, I don't recall where it came from  
20 actually.

21                       HEARING OFFICER SUDMAN: Thank you.

22 BY MR. JAWGIEL:

23           Q.       What was your understanding of the  
24 purpose of Exhibit No. 1?

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1           A.       Well, I think this was an explanation  
2 from Murray to the Attorney General about some of  
3 the discrepancies in the monitoring reports, an  
4 explanation of them.

5           Q.       Did Skokie Valley at some point in  
6 time file -- strike that.

7                       Did Skokie Valley at some point in  
8 time mail to the Illinois EPA amended reports with  
9 the corrected information from the testing facility?

10          A.       I'm not sure of that. I don't know;  
11 we could have.

12          Q.       You had mentioned in your examination  
13 by Mr. Cohen that you thought that Skokie Valley was

14 going to be covered under a blanket permit and  
15 that's one of the reasons why an NPDES permit wasn't  
16 renewed?

17 A. That's right.

18 Q. What was your understanding regarding  
19 this blanket permit?

20 A. Well, I mean --

21 MR. COHEN: Your Honor, I'm going to  
22 object because it's really irrelevant in  
23 terms of this case. The violations the  
24 plaintiff is facing in terms of the law and

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1 the permittee's understanding really has no  
2 relevance.

3 HEARING OFFICER SUDMAN: Well, I think  
4 it goes to his affirmative defense that the  
5 Board said they were allowed the raise.

6 I'll let you go ahead.

7 MR. JAWGIEL: I think it goes directly  
8 to it actually.

9 HEARING OFFICER SUDMAN: Yes.

10 THE WITNESS: When we had to renew the  
11 permit, when it came up, we had -- there was  
12 all this talk of the different associations,

13 the Illinois Asphalt Paving Association and  
14 the Illinois Truckers' Association, going  
15 together and getting blanket permits for  
16 different operations, ours being mainly a  
17 trucking and equipment storage yard.

18 That's what we were going to go  
19 with, this trucking thing, and my brother  
20 talked to somebody in the Illinois EPA's  
21 office and said, well, yeah, that people are  
22 going to get all of these blanket permits, so  
23 at that particular time we didn't apply for  
24 one. We thought that we could get a blanket

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1 permit.

2 BY MR. JAWGIEL:

3 Q. Was it your understanding that Skokie  
4 Valley at that point in time was not required to  
5 renew its NPDES permit because it was going to fall  
6 under this blanket permit based on what was said by  
7 the Illinois EPA?

8 MR. COHEN: Objection, leading.

9 MR. JAWGIEL: I'm asking whether or  
10 not it was his understanding or not.

11 MR. COHEN: Through the whole thing

12 this has now been one topic covered on direct  
13 examination.

14 MR. JAWGIEL: They talked about the  
15 NPDES permit. It clearly -- and the  
16 parameters, not renewing it and things of  
17 that nature and I'm trying to establish our  
18 affirmative defense.

19 MR. COHEN: And you're leading him  
20 through a blanket permit topic that was not  
21 covered on direct.

22 HEARING OFFICER SUDMAN: Can you  
23 rephrase the question?

24 MR. JAWGIEL: Your Honor, can you

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1 please admonish the State that they're not to  
2 direct their comments to me; they're to  
3 direct the comments to the Court.

4 HEARING OFFICER SUDMAN: I will remind  
5 all counsel to please direct your comments to  
6 me.

7 Could you remind me of what the  
8 question was, please?

9 MR. JAWGIEL: Sure.

10 BY MR. JAWGIEL:

11 Q. Sir, what was your understanding of  
12 why Skokie Valley did not renew its permit at the  
13 time that it was required to be?

14 A. We were under the understanding that  
15 we could go in under a blanket permit under one of  
16 the associations that we belonged to.

17 Q. And what was your understanding of who  
18 lead you to believe that?

19 A. Well, I mean, my brother did talk to  
20 somebody down at the EPA's office. Now whether or  
21 not -- that's a million years ago whether or not we  
22 can come up with the name of that person. And  
23 everybody -- all of our competitors and people that  
24 we dealt with were going to get a permit under this

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1 blanket permit.

2 MR. COHEN: Objection, your Honor,  
3 move to strike. Both answers are based on  
4 hearsay.

5 HEARING OFFICER SUDMAN: Well, I think  
6 it goes to -- it just goes to his  
7 understanding. I don't think he's -- I'll  
8 allow it.

9 BY MR. JAWGIEL:

10 Q. There was some talk about a particular  
11 area surrounding the Skokie Valley site. What type  
12 of properties or facilities, if you will, existed  
13 around the Skokie Valley site back in May of 1995?

14 A. Well, I mean, to the west of us, we  
15 had a farm and landscapers. To the south we had  
16 more farms. To the east there was a landfill, a  
17 railroad to the south and a car dealership to the --  
18 or I mean, to the north the railroad tracks and the  
19 car dealerships and houses.

20 Q. And was there a subdivision of houses  
21 that was in that area?

22 A. Yes.

23 MR. JAWGIEL: At this point in time,  
24 your Honor, I'm going to stop my examination

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1 of Mr. Frederick. We do reserve the right to  
2 recall him in our case in chief.

3 HEARING OFFICER SUDMAN: Okay.

4 Mr. Cohen, do you have anymore  
5 questions?

6 MR. COHEN: I have nothing further.

7 HEARING OFFICER SUDMAN: Okay. Thank

8           you very much, Mr. Frederick. You are  
9           finished for today but you may be needed  
10          tomorrow.

11                   THE WITNESS: Okay.

12                   HEARING OFFICER SUDMAN: Anything  
13           anyone wants to say while we're still on the  
14           record?

15                   MR. JAWGIEL: No.

16                   HEARING OFFICER SUDMAN: Shall we go  
17           off the record for a moment?

18                   MR. JAWGIEL: Yes, please.

19                   HEARING OFFICER SUDMAN: Okay. We'll  
20           go off the record.

21                   THE REPORTER: Okay.

22                   HEARING OFFICER SUDMAN: We are back  
23           on the record. It is 4:40. We've decided to  
24           conclude for today. We will recess and we

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1           will reconvene tomorrow at 9:00 a.m.

2                           (Whereupon, at 4:40 p.m., an  
3                           adjournment was taken to  
4                           9:00 a.m., on Friday,  
5                           October 31, 2003.)

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1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF DUPAGE )  
4  
5

6 I, MARIA E. SHOCKEY, CSR, do  
7 hereby state that I am a court reporter doing  
8 business in the City of Chicago, County of DuPage,  
9 and State of Illinois; that I reported by means of  
10 machine shorthand the proceedings held in the  
11 foregoing cause, and that the foregoing is a true  
12 and correct transcript of my shorthand notes so  
13 taken as aforesaid.

14

15

16

\_\_\_\_\_  
Maria E. Shockey, CSR  
Notary Public,  
DuPage County, Illinois

17

18

19 SUBSCRIBED AND SWORN TO  
before me this \_\_\_\_ day  
20 of \_\_\_\_\_, A.D., 2003.

21

\_\_\_\_\_  
22 Notary Public

23

24

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1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OF THE  
STATE OF ILLINOIS

2

3

4 PEOPLE OF THE STATE OF ILLINOIS, )  
)  
)

5 Complainant, )  
6 vs ) No. PCB 96-98  
7 SKOKIE VALLEY ASPHALT CO., INC., )  
8 EDWIN L. FREDERICK, JR., )  
9 individually and as owner and )  
10 president of SKOKIE VALLEY )  
11 ASPHALT CO., INC., and )  
12 RICHARD J. FREDERICK, individually )  
13 and as owner and vice president of )  
14 SKOKIE VALLEY ASPHALT CO., INC., )  
15 Respondents. )

12

13

14 VOLUME I - Pages 1 through 329

15

16 TRANSCRIPT OF PROCEEDINGS held in the  
17 hearing of the above-entitled matter, taken  
18 stenographically by Maria E. Shockey, CSR, before  
19 CAROL SUDMAN, Hearing Officer, at the Libertyville  
20 Village Hall, 118 West Cook Street, Libertyville,  
21 Illinois, on the 30th of October, A.D., 2003, at  
22 9:00 a.m.

23

24

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

2

3 ILLINOIS POLLUTION CONTROL BOARD,  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9274

4 (217) 524-8509  
5 BY: MS. CAROL SUDMAN, HEARING OFFICER

6 OFFICE OF THE ILLINOIS ATTORNEY GENERAL,  
7 188 West Randolph Street  
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10 (312) 814-5282  
11 BY: MR. MITCHELL L. COHEN  
12 MR. BERNARD J. MURPHY

13  
14 Appeared on behalf of the Complainant;

15  
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17 5487 North Milwaukee Avenue  
18 Chicago, Illinois 60630  
19 (773) 774-0814  
20 BY: MR. MICHAEL B. JAWGIEL

21 - AND -

22 LAW OFFICE OF DAVID S. O'NEILL,  
23 5487 North Milwaukee Avenue  
24 Chicago, Illinois 60630-1249  
(773) 792-1333  
BY: MR. DAVID S. O'NEILL

25  
26 Appeared on behalf of the Respondents.

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29  
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1 HEARING OFFICER SUDMAN: Good morning.

2 My name is Carol Sudman and I'm a hearing  
3 officer with the Pollution Control Board.  
4 This is the hearing for PCB 96-98, People  
5 versus Skokie Valley Asphalt, Edwin L.  
6 Frederick, Jr., and Richard J. Frederick.

7 It is October 30, 2003 and we are  
8 beginning at 9:00 a.m. I will note for the  
9 record that there are no members of the  
10 public present. Members of the public are  
11 allowed to provide public comment if they so  
12 choose.

13 At issue in this case are the  
14 allegations that respondents violated various  
15 provisions of the Environment Protection Act  
16 and the Board's regulations relating to water  
17 pollution. The complaint concerns  
18 respondent's facility in Grayslake,  
19 Lake County.

20 You should know that it is the  
21 Pollution Control Board and not me that will  
22 make the final decision in this case. My  
23 purpose is to conduct a hearing in a neutral  
24 and orderly manner so that we have a clear

1 record of the proceedings. I will also  
2 assess the credibility of any witnesses on  
3 the record at the end of the hearing.

4 This hearing was noticed pursuant  
5 to the Act and the Board's rules and will be  
6 conducted pursuant to Sections 101.600  
7 through 101.632 of the Board's procedural  
8 rules.

9 At this time, I would like to ask  
10 the parties to please make their appearances  
11 on the record.

12 MR. COHEN: Madam Hearing Officer,  
13 Mitchell Cohen, Assistant Attorney General,  
14 representing the People of the State of  
15 Illinois.

16 HEARING OFFICER SUDMAN: Thank you.

17 MR. MURPHY: Assistant Attorney  
18 General Bernard J. Murphy, Jr., representing  
19 the State of Illinois.

20 MR. O'NEILL: David O'Neill  
21 representing the respondents.

22 MR. JAWGIEL: And Michael Jawgiel  
23 representing the respondents as well.

24 HEARING OFFICER SUDMAN: Thank you

1 very much.

2 Would the People like to give an  
3 opening statement?

4 MR. COHEN: Yes.

5 OPENING STATEMENT

6 BY MR. COHEN:

7 Madam Hearing Officer, Counselors,  
8 beginning in December 1994 and continuing  
9 through April 1995, the water in the Avon  
10 drainage ditch had an oily sheen. The Avon  
11 Fremont drainage ditch is a water of the  
12 State that flows north past and not far from  
13 the Skokie Valley Asphalt Company's site into  
14 Third Lake, another water of the State.

15 The Skokie Valley Asphalt Company,  
16 Inc., what used to be Liberty Asphalt, is  
17 located in Grayslake, Lake County, Illinois.  
18 When Skokie Valley Asphalt was in business,  
19 it was owned and operated by respondents,  
20 Edwin L. Frederick, Jr., who goes by Larry,  
21 and his brother Richard J. Frederick.

22 Skokie Valley Asphalt or Liberty  
23 Asphalt used to produce asphalt at the  
24 Grayslake site. More recently before the

1 Frederick brothers sold their business, the  
2 site was used for vehicle storage,  
3 dispatching, and material storage. The  
4 Frederick brothers ran an asphalt paving  
5 business from the Grayslake site.

6 The area around the site is  
7 farmland. There's also a residential area  
8 and a nursery. There's no other industry,  
9 factories or gas stations nearby. There's  
10 just farm fields between the Skokie Valley  
11 Asphalt site and the Avon drainage ditch.

12 In April of 1995, the Fredericks  
13 discovered a drain tile that ran through  
14 their property. The water in that drain tile  
15 flowed toward the Avon drainage ditch. The  
16 water in that drain tile also had an oily  
17 sheen.

18 Finally, the Frederick brothers  
19 contacted an environmental engineer. They  
20 cut off the flow of oil to the Avon drainage  
21 ditch, began looking for on-site sources and  
22 solutions and are still in the process of  
23 remediating the site in 2003.

24 You see, the water pollution event

1           alleged in the second amended complaint is  
2           really the culmination of a long history of  
3           environmental problems at the Skokie Valley  
4           Asphalt site. The problems began many years  
5           before, most dealing with water quality  
6           issues. As a result, the Illinois  
7           Environmental Protection Agency issued Skokie  
8           Valley Asphalt Company a storm water NPDES  
9           permit in 1986.

10                         You're going to hear testimony  
11           from Mike Garretson. He works for the  
12           Illinois Environmental Protection Agency;  
13           he has for over 20 years. He works for the  
14           division of water pollution control  
15           compliance assurance section. He will  
16           explain about the compliance assurance  
17           section, how they use NPDES permits and  
18           discharge monitoring reports or DMRs.

19                         Mr. Garretson has been with the  
20           Illinois EPA long enough to know how this  
21           system worked back in the '80s and early '90s  
22           when Skokie Valley Asphalt was first issued  
23           their permit. He was explaining Skokie  
24           Valley Asphalt's DMR reporting requirements

1 and discharge concentration limits based on  
2 their permit.

3 He will describe a number of  
4 months when Skokie Valley Asphalt failed to  
5 file any DMRs in two separate two-month  
6 period where Skokie Valley Asphalt filed  
7 identical DMRs. Except for the dates on the  
8 DMRs, the scientific data was identical,  
9 highly unusual.

10 Mr. Garretson will also testify to  
11 a number of months where Skokie Valley  
12 Asphalt reported excessive discharge  
13 concentrations of total suspended solids in  
14 their DMRs that they submitted to the  
15 Illinois EPA.

16 You will hear testimony from  
17 Chris Kallis. He works as a field inspector  
18 for the Illinois EPA Bureau of Water. He's  
19 been doing this for over 20 years too. He's  
20 been inspecting the Skokie Valley Asphalt  
21 site in Grayslake since the 1980s.

22 He's familiar with the  
23 environmental history of the site, Skokie  
24 Valley Asphalt's NPDES permit, and some of

1 the events surrounding the late 1994, '95  
2 water pollution incident causing the oil  
3 sheen on the Avon drainage ditch.

4 In March of 1995, Mr. Kallis took  
5 a sample of the effluent feeding into the  
6 Avon drainage ditch and had it tested for oil  
7 and grease concentrations. Don Klopke will  
8 also testify. He too works for the Illinois  
9 EPA and has for many years. He works for the  
10 office of emergency response.

11 He'll explain why the office of  
12 emergency response was involved in an  
13 investigation at the Avon drainage ditch at  
14 the end of 1994, 1995. He'll explain why  
15 the USEPA, United States Environmental  
16 Protection Agency, became involved in that  
17 investigation. Mr. Klopke will also describe  
18 his observations at the Avon drainage ditch  
19 in 1995 and how Skokie Valley Asphalt  
20 ultimately became involved in the clean-up of  
21 the ditch.

22 As I mentioned earlier, Skokie  
23 Valley Asphalt hired an environmental  
24 engineer in April of 1995 after discovering

1 oil in a drain tile on their property. The  
2 engineer's name is James Huff. He will  
3 testify as well. The People expect Mr. Huff  
4 to testify about how he was contacted by  
5 Skokie Valley Asphalt, that a site visit was  
6 scheduled but before his site visit, Skokie  
7 Valley Asphalt called explaining that they  
8 had discovered oil in a field tile that ran  
9 through their property.

10 This discovery lead to a chain of  
11 events that continues in 2003, for example,  
12 the drain tile with oil in it was plugged so  
13 it no longer flowed to the Avon drainage  
14 ditch. Skokie Valley Asphalt placed oil  
15 absorbing booms in the Avon drainage ditch to  
16 prevent the oil from flowing north into Third  
17 Lake.

18 A leaking underground storage tank  
19 was removed from the Skokie Valley Asphalt  
20 site and other on-site areas were remediated  
21 to remove oil contamination. Mr. Huff found  
22 these other areas of contaminating after  
23 learning about the history of the site from

24 the Fredericks and digging test pits. He

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1 worked with and reported directly to the  
2 Frederick brothers.

3 With Mr. Huff's help, Skokie  
4 Valley Asphalt did apply to participate in  
5 the Illinois EPA site remediation program  
6 seeking a focused no further remediation  
7 letter, not in 1995 when the oil was  
8 discovered on site, it wasn't until 1998.  
9 That leaves the respondents, Larry and  
10 Richard Frederick. I already mentioned they  
11 owned and operated Skokie Valley Asphalt  
12 Company, 50/50.

13 They were responsible for the  
14 whole operation. They both dealt with the  
15 Illinois EPA and James Huff reports to both  
16 of them. They both worked at the Skokie  
17 Valley Asphalt site in Grayslake for decades,  
18 that is, until 1998. In 1998, the Frederick  
19 brothers dissolved their corporations and in  
20 1998, the Frederick brothers sold their  
21 business, including the site in Grayslake for  
22 over

23 \$8 million.

24 At the end of all the evidence, we

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1 expect each of the respondents to be found in  
2 violation of the Act and liable for all five  
3 counts alleged in the second amended  
4 complaint: Filing false reports, filing late  
5 to renew their permit, failing to comply with  
6 sampling and reporting requirements, water  
7 pollution, and violating effluent limits.

8 At that time, the People of the  
9 State of Illinois will ask this Board for  
10 cease and desist orders against the  
11 respondents, civil penalties, and all other  
12 remedies under the law and relief the Board  
13 deems appropriate.

14 HEARING OFFICER SUDMAN: Thank you.  
15 Mr. Jawgiel, would you like to make an  
16 opening statement?

17 MR. JAWGIEL: Yes, very briefly. But  
18 I also would like to address when the --

19 HEARING OFFICER SUDMAN: The motions?

20 MR. JAWGIEL: Right, the motions.

21 HEARING OFFICER SUDMAN: Yes. Before

22 the People present their case, I would ask  
23 that you --

24 MR. JAWGIEL: Renew those motions?

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1 HEARING OFFICER SUDMAN: Yes.

2 MR. JAWGIEL: Okay. I just wanted to  
3 make sure we're all on the same procedure;  
4 that's all.

5 HEARING OFFICER SUDMAN: Yes. Thank  
6 you.

7 MR. JAWGIEL: Thanks a lot.

8 OPENING STATEMENT

9 BY MR. JAWGIEL:

10 Counsels, Madam Hearing Officer,  
11 what's missing from the opening statement of  
12 the State is quite clear and it's glaring, it  
13 really is. What the evidence won't show is  
14 as much as important as what the evidence  
15 will show.

16 And what the evidence won't show  
17 in this case is very simple. The evidence  
18 shows that anybody took the time out to take  
19 a sample from the site of Skokie Valley and  
20 match it to what was in the creek.

21                               They're doing this clearly by  
22                               smoke in mirrors. Nobody whether it's  
23                               Mr. Kallis -- you'll hear him testify that he  
24                               didn't even look to see where this drain tile

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1                               ran. He didn't canvas the area for other  
2                               businesses that may contribute to this. He  
3                               doesn't know what's in the area at all.

4                               You'll also hear from him in his  
5                               testimony when we called him in our case in  
6                               chief that he thought it was pure conjecture  
7                               that the oil was coming from Skokie Valley.  
8                               So we hear a lot about what the State says  
9                               they're going to prove but the key is they  
10                              can't prove that what was in that creek  
11                              actually came from somewhere on Skokie Valley  
12                              property. That's a very important issue.

13                              With respect to the false filing  
14                              reports, with respect to that issue, the  
15                              Fredericks are not responsible. They are not  
16                              the permittees. The permittee in this case  
17                              is Skokie Valley. And if you find that  
18                              Skokie Valley was responsible for that, then  
19                              you'll also have to look at the circumstances

20 around that.

21 You have to realize that you'll  
22 hear testimony both from Richard and Larry  
23 Frederick who will state that they did all  
24 the testing. They corrected the reports once

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1 they found out that there was some error,  
2 clerical errors, in filing. You'll also hear  
3 from Mr. Huff saying that there was no  
4 environmental impact from those reports.

5 You'll also hear from Mr. Kallis  
6 who will say in his testimony that it is his  
7 procedure not to even take note of the  
8 particular DMRs until maybe two or three  
9 reports down the road that's showing elevated  
10 levels.

11 But apparently, in this case we  
12 have a situation where they seem to have  
13 picked on Skokie Valley and they did so in an  
14 untimely fashion. They waited on their  
15 hands. They sat on their hands and then they  
16 came years later and required these gentlemen  
17 and Skokie Valley to defend themselves.

18 And you'll hear numerable times

19 during the course of this that a document is  
20 no longer is existence, that people cannot  
21 remember what was said, what was done, and  
22 all that plays into the fact that the State  
23 is trying to bring a case by delay and  
24 sandbagging.

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1 When we talk about the sampling  
2 procedures, you're going to see again there's  
3 no critique of how they took the sample.  
4 Nobody has the opinion that the sampling was  
5 done inappropriately. Nobody can tie in the  
6 fact that there was actually damage that lead  
7 into the waterways.

8 They'll tell you, oh, yes, well,  
9 the Avon Creek leads into Grayslake and also  
10 feeds into Third Lake, but there's no testing  
11 that Grayslake or Third Lake was affected  
12 whatsoever by this and you won't hear that  
13 either.

14 At the close of our case, we will  
15 request that the Board find in favor of the  
16 respondents and we will seek our appropriate  
17 remedies from there as well.

18

Thank you.

19

HEARING OFFICER SUDMAN: Thank you.

20

Before you have a seat, Mr. Jawgiel, would

21

you like to now address your motions?

22

MR. JAWGIEL: Sure. Thank you.

23

Just for the record, these motions

24

were presented in total two days ago, Madam

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1

Hearing Officer, is that correct?

2

HEARING OFFICER SUDMAN: I think it

3

was October 27.

4

MR. JAWGIEL: 27th? It's all a blur.

5

In total we have a motion in

6

limine. We also have various motions to

7

bar -- one motion to bar Mr. Ken Savage,

8

which apparently, Mr. Savage is not going to

9

be a witness here today or tomorrow if I took

10

the State's opening statement to be correct.

11

MR. COHEN: Correct.

12

MR. JAWGIEL: So we can set that

13

aside.

14

We do have a motion to bar or

15

limit the testimony of Mr. Klopke, a motion

16

to bar or limit the testimony of

17 Mr. Garretson, a motion to bar or limit the  
18 testimony of Ms. Lavis, and apparently, she's  
19 not testifying either, so we'll set this  
20 aside.

21 So basically, we're down to our  
22 motions in limine, which they're a series of  
23 motions within --

24 HEARING OFFICER SUDMAN: Right. As I

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1 had told you yesterday, I will admit those  
2 into the record as if read. And my rulings  
3 that I made in my hearing officer order on  
4 October 28 will stand. I recall attaching  
5 those, so that will all be in the record for  
6 you, okay?

7 MR. JAWGIEL: Okay. Madam Hearing  
8 Officer, we will be renewing objections as  
9 evidence is provided to preserve our right of  
10 appeal if this goes that far, but I think  
11 we're obligated to do so. We don't mean to  
12 be --

13 HEARING OFFICER SUDMAN: I mean, with  
14 some lines I may ask you to make a continuing  
15 objection just so that --

16 MR. JAWGIEL: That's fair enough.

17 HEARING OFFICER SUDMAN: -- we can  
18 move things along.

19 MR. JAWGIEL: As long as the record is  
20 clear on that issue.

21 HEARING OFFICER SUDMAN: Yes,  
22 absolutely.

23 MR. JAWGIEL: We're not trying to  
24 delay or by any means stretch this out.

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1 Would you like me to submit this  
2 to --

3 HEARING OFFICER SUDMAN: Yes, please.

4 MR. JAWGIEL: Those are the motions  
5 that we are standing on. The ones that I've  
6 redacted, I'll just take back to the desk.

7 HEARING OFFICER SUDMAN: Okay. Thank  
8 you. These will be admitted to the record  
9 and I will attach a copy of my October 28  
10 hearing officer order to the back of these.

11 Are there anymore preliminary  
12 matters that we need to discuss before the  
13 People present their case?

14 MR. COHEN: I can't think of any.

15 HEARING OFFICER SUDMAN: Okay.

16 MR. JAWGIEL: Exclude witnesses, your  
17 Honor, of -- exclude witnesses who are  
18 nonparties to the testimony that's going to  
19 be provided here. We would ask that  
20 witnesses who are either not the Fredericks  
21 or witnesses who are not the representatives  
22 of the Illinois EPA be excluded from the room  
23 from hearing other testimony.

24 HEARING OFFICER SUDMAN: I don't know.

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1 I mean, do you object to that?

2 MR. COHEN: I know that's normal  
3 courtroom procedure. I don't know what the  
4 Board does.

5 HEARING OFFICER SUDMAN: I mean, we  
6 normally don't do that, but I don't have a  
7 problem with it. I mean, you just have  
8 one -- do you have any witnesses here who are  
9 not --

10 MR. COHEN: Yes. We were planning to  
11 call Mr. Garretson first and that would leave  
12 Mr. Kallis in the room.

13 HEARING OFFICER SUDMAN: But

14 Mr. Kallis is not testifying; is that  
15 correct?

16 MR. COHEN: He's going to testify  
17 next.

18 HEARING OFFICER SUDMAN: Oh, he is  
19 going to testify next.

20 MR. COHEN: Right.

21 HEARING OFFICER SUDMAN: Okay. All  
22 right.

23 MR. COHEN: So you would ask  
24 Mr. Kallis to be excused?

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1 HEARING OFFICER SUDMAN: Yes, please.

2 I would also like to note for the  
3 record that Mr. Joel Sternstein is here from  
4 the Attorney General's office. The People  
5 did request that Mr. Sternstein be allowed to  
6 sit in. I granted that request under the  
7 condition that Mr. Sternstein did not  
8 communicate with anybody involved in the  
9 hearing.

10 If there is anyone here not  
11 involved with the hearing, you may  
12 communicate with them. You may also

13 communicate with me if you need to, Joel. So  
14 with that warning aside, you may observe.

15 The People may present their case.

16 MR. COHEN: Thank you, Madam Hearing  
17 Officer. Our first witness will be Mike  
18 Garretson.

19 HEARING OFFICER SUDMAN: Would you  
20 please swear him in?

21 THE REPORTER: Sure.

22 (Witness sworn.)

23

24

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1 WHEREUPON:

2 MICHAEL GARRETSON

3 called as a witness herein, having been first duly  
4 sworn, deposeth and saith as follows:

5 D I R E C T E X A M I N A T I O N

6 BY MR. COHEN:

7 Q. Would you please state your name and  
8 spell your last name for the record?

9 A. Michael Garretson, G-A-R-R-E-T-S-O-N.

10 Q. Mr. Garretson, where do you work?

11 A. I work for the Illinois Environmental

12 Protection Agency.

13 Q. And do you work and live in  
14 Springfield?

15 A. Yes, I do.

16 Q. How long have you worked for the  
17 Illinois Environmental Protection Agency?

18 A. For 24 years.

19 Q. Where did you work for the agency when  
20 you started working there 24 years ago?

21 A. I started in the water pollution  
22 control division in the operator certification unit.

23 Q. And have you held other positions over  
24 your 24 years there?

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1 A. In 1987, I became the manager of the  
2 compliance operations unit and then in January of  
3 2003, I became the acting manager of the compliance  
4 assurance section.

5 Q. What is the compliance operations  
6 unit?

7 A. The compliance operations unit  
8 provides support for the compliance assurance  
9 section. It is a unit of the section codes, NPDES  
10 permits, and processes DMR forms, discharge

11 monitoring report forms, received by the agency.

12 Q. You also mentioned NPDES permits.

13 What does NPDES stand for?

14 A. National Pollutant Discharge

15 Elimination System.

16 Q. What responsibilities does the

17 compliance assurance section have?

18 A. To monitor compliance of water and

19 waste water treatment facilities with NPDES permits,

20 to process DMR forms and to take compliance actions

21 as necessary.

22 Q. Now, you mentioned waste water, would

23 you also have storm water responsibilities?

24 A. Yes.

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1 Q. And what does your unit actually do

2 with NPDES permits? And let me direct your

3 attention more toward the late 1980s, early 1990s

4 rather than today.

5 A. Well, what we do is monitor the

6 compliance of waste water facilities with the NPDES

7 permits, compare discharge monitoring reports with

8 limits contained in those permits.

9 Q. You keep saying waste water, but do

10 you also mean storm water?

11 A. Yes.

12 Q. And is one of the ways that you do  
13 that monitoring with discharge monitoring reports or  
14 DMRs?

15 A. Yes.

16 Q. And what do you do with those?

17 A. Discharge monitoring reports are  
18 received, they are logged in and distributed, and  
19 compared with NPDES permit limits.

20 Q. Are you familiar with the Skokie  
21 Valley Asphalt Company?

22 A. Yes. I'm familiar that they had an  
23 NPDES permit.

24 Q. And is that basically how you're

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1 familiar with that company?

2 A. Yes.

3 Q. You have never gone out the Grayslake  
4 and seen the facility or anything like that?

5 A. No, I haven't.

6 MR. COHEN: Madam Hearing Officer, may

7 I approach?

8 HEARING OFFICER SUDMAN: Yes.

9 BY MR. COHEN:

10 Q. Mr. Garretson, I'm handing you a white  
11 binder entitled Complainant's Exhibits. I also have  
12 one here for the hearing officer --

13 HEARING OFFICER SUDMAN: Oh, thank  
14 you.

15 Q. -- and one has been given to  
16 respondents' counsel.

17 Directing your attention to  
18 Complainant's Exhibit No. 1, do you recognize that  
19 exhibit?

20 MR. JAWGIEL: I'm going to object to  
21 the foundation.

22 HEARING OFFICER SUDMAN: Would you  
23 like to lay some foundation for this?

24 MR. COHEN: That's exactly what I'm

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1 trying to do.

2 HEARING OFFICER SUDMAN: Okay.

3 THE WITNESS: Yes. It's the NPDES  
4 permit issued to Skokie Valley Asphalt  
5 Company.

6 BY MR. COHEN:

7 Q. And when was that permit issued to  
8 them?

9 MR. JAWGIEL: Your Honor, I'm going to  
10 object. This goes beyond the scope of his  
11 213 interrogatories.

12 HEARING OFFICER SUDMAN: Overruled.

13 THE WITNESS: It was issued on  
14 April 4, 1986.

15 BY MR. COHEN:

16 Q. And when did this become effective?

17 A. May 4, 1986.

18 Q. And when did this permit expire?

19 A. March 1, 1991.

20 Q. Is that a true and correct copy of the  
21 permit?

22 A. Yes, it is.

23 Q. And is that permit kept in the  
24 ordinary course of Illinois EPA business?

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1 A. Yes, it is.

2 Q. What is the permit number issued to  
3 the Skokie Valley Asphalt Company?

4 A. IL-0065005.

5 Q. Did the NPDES permit issued to Skokie

6 Valley Asphalt Company require them to submit DMRs?

7 MR. JAWGIEL: Your Honor, objection,  
8 legal conclusion.

9 HEARING OFFICER SUDMAN: The question  
10 or the answer?

11 MR. JAWGIEL: The question asks for a  
12 legal conclusion whether or not the permit  
13 requires -- the requirements of the permit  
14 speak for themselves.

15 HEARING OFFICER SUDMAN: Overruled.  
16 I'll allow it.

17 MR. JAWGIEL: I'll object also to  
18 foundation. He hasn't established that this  
19 individual knows the requirements of an NPDES  
20 permit at the time of issuance.

21 HEARING OFFICER SUDMAN: Okay. Well,  
22 he's not finished.

23 THE WITNESS: Yes. The NPDES permit  
24 requires the permittee to submit monthly

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1 discharge monitoring report forms.

2 BY MR. COHEN:

3 Q. And when would Skokie Valley Asphalt  
4 Company be required to start submitting their

5 discharge monitoring reports?

6 MR. JAWGIEL: Same objection, your  
7 Honor. We haven't established a foundation  
8 that this individual is knowledgeable with  
9 respect to this permit at the time. That  
10 foundation has not been laid.

11 HEARING OFFICER SUDMAN: Would you  
12 like to make a continuing objection? I mean,  
13 it sounds like he's moving in that direction.

14 MR. JAWGIEL: Yes. That's fine, your  
15 Honor. I'll have a continuing objection. I  
16 assume that my objections are overruled?

17 HEARING OFFICER SUDMAN: Yes.

18 Please continue and please do  
19 establish a foundation.

20 THE WITNESS: Could you please repeat  
21 the question?

22 BY MR. COHEN:

23 Q. Let me go back to your work again with  
24 the compliance assurance section. Back in the late

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1 '80s, what did your division do when you received  
2 NPDES permits?

3 A. As NPDES permits were issued, the

4 requirements contained in those permits were entered  
5 into a computer system for tracking.

6 Q. So would your unit be responsible for  
7 reviewing those permits and learning and  
8 understanding what the requirements of the permits  
9 were?

10 MR. JAWGIEL: Objection, your Honor,  
11 leading.

12 HEARING OFFICER SUDMAN: Well, you are  
13 leading a little bit. Could you just --

14 MR. COHEN: He keeps asking me to lay  
15 the foundation.

16 HEARING OFFICER SUDMAN: Yeah. I  
17 mean, this is pretty introductory stuff.

18 MR. JAWGIEL: It's introductory, but  
19 he can simply ask what was the responsibility  
20 of your department. He doesn't have to lay  
21 it out for him step by step. This individual  
22 who allegedly is a knowledgeable person of  
23 the procedures can tell us in his detail --  
24 in his own words, what this department does.

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1 HEARING OFFICER SUDMAN: Well, I think  
2 he's just trying to speed things along a

3 little bit because you want foundation and  
4 the witness doesn't know what information  
5 you're looking for and I think Mr. Cohen can  
6 help him reach that a little faster.

7 MR. JAWGIEL: He's not allowed to lead  
8 in order to shrunKate this proceeding for his  
9 benefit. If this individual doesn't give the  
10 testimony he wants, that's the State's  
11 problem.

12 HEARING OFFICER SUDMAN: Mr. Jawgiel,  
13 I will not allow him to lead the witness.  
14 However, I consider this testimony on laying  
15 the foundation to be fairly preliminary.

16 MR. JAWGIEL: Thank you, your Honor.

17 HEARING OFFICER SUDMAN: So your  
18 objection is overruled.

19 Please continue.

20 BY MR. COHEN:

21 Q. Do you remember the question?

22 A. No. I'm sorry.

23 Q. Is part of the function of your unit  
24 to review the requirements of the NPDES permits so

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1 that you would know what those requirements were?

2 MR. JAWGIEL: Same objection.

3 HEARING OFFICER SUDMAN: Would you  
4 like to make a standing objection,  
5 Mr. Jawgiel?

6 MR. JAWGIEL: Please. Thank you,  
7 your Honor.

8 THE WITNESS: The NPDES permits, like  
9 I said, are reviewed and coded into a  
10 computer system for compliance tracking.

11 BY MR. COHEN:

12 Q. And did you do that -- did your unit  
13 do that with the Skokie Valley Asphalt Company?

14 A. Yes, we did.

15 Q. When was Skokie Valley Asphalt  
16 supposed to start submitting their DMR reports?

17 MR. JAWGIEL: Same objection,  
18 foundation.

19 HEARING OFFICER SUDMAN: You have a  
20 standing objection to this entire line of  
21 questioning, okay?

22 MR. JAWGIEL: Thank you, your Honor.  
23 Please continue.

24 THE WITNESS: It would have been

1           June 15, 1986.

2   BY MR. COHEN:

3           Q.       And why do you say June 15, 1986?

4           A.       Because the NPDES permit requires the  
5   permittee to submit the discharge monitoring report  
6   form no later than the 15th of the following month.

7           Q.       The 15th of the following month?

8           A.       For each month, yes.

9           Q.       Is that the 15th of the following  
10   month after the permit is issued?

11          A.       After the permit becomes effective.

12          Q.       And does that DMR responsibility begin  
13   even if the company is not discharging?

14          A.       Yes. The NPDES permit states that.

15          Q.       Can you explain the process that the  
16   Illinois EPA uses when DMRs are received at the  
17   division of water pollution control compliance  
18   assurance section and, again, I'm referring to back  
19   in the late '80's or early '90s?

20          A.       Yes. At that time, DMRs were received  
21   in the mail. They were opened -- the mail was  
22   opened by one particular individual, then the DMRs  
23   were date stamped and then provided to another  
24   individual for logging in our DMR submission records

1 and then they were copied and distributed to our  
2 regional offices and our records unit.

3 Q. Is that generally the same procedure  
4 that was used for Skokie Valley Asphalt Company's  
5 DMR?

6 MR. JAWGIEL: Your Honor, I'm going to  
7 object. There's no foundation with respect  
8 to this individual's personal knowledge of  
9 what happened to the DMRs submitted by Skokie  
10 Valley.

11 HEARING OFFICER SUDMAN: Overruled.

12 THE WITNESS: Yes.

13 BY MR. COHEN:

14 Q. Directing your attention to  
15 Complaint's Exhibit No. 2, do you recognize that?

16 MR. JAWGIEL: I'm going to object to  
17 the foundation, your Honor. That is not a  
18 proper form of a question to establish an  
19 exhibit.

20 HEARING OFFICER SUDMAN: I'll allow  
21 it. Just allow him a couple of questions to  
22 establish a foundation, you know, first.

23 So please go ahead.

24 THE WITNESS: Yes. This is the

1 November 1990 discharge monitoring report  
2 form submitted by Skokie Valley Asphalt  
3 Company, Incorporated.

4 BY MR. COHEN:

5 Q. When was it received by the Illinois  
6 EPA?

7 A. On December 18, 1990.

8 Q. How can you tell that it was received  
9 by the Illinois EPA on that date?

10 A. By the compliance assurance section  
11 date stamp on the document.

12 Q. Are all DMRs stamped received by your  
13 unit?

14 MR. JAWGIEL: I'm going to object,  
15 your Honor, with respect to foundation. He  
16 can talk about procedure but he can't talk --  
17 unless he establishes a foundation that this  
18 individual processed every single DMR,  
19 whether or not every single DMR has been  
20 stamped.

21 HEARING OFFICER SUDMAN: You can make  
22 a standing objection as to the foundation of  
23 this document, but I'm going to overrule your  
24 objection for now.

1                   Please continue.

2                   THE WITNESS: DMRs are generally date  
3 stamped. There have been times when not all  
4 of them have been stamped.

5 BY MR. COHEN:

6           Q.       Do you know why sometimes not all DMRs  
7 were date stamped?

8           A.       Well, I do know back at the time that  
9 we're talking about that we received a lot of  
10 discharge monitoring report forms. We had the  
11 practice of date stamping every individual page of  
12 the DMR. We made a procedural change so that just  
13 the top page of the documents would be date stamped.

14                   But in some cases when multiple  
15 submissions of DMRs could come in together, it  
16 resulted in errors because the top copy got stamped  
17 and not all of the DMRs.

18           Q.       Do you know of any other reasons DMRs  
19 might not have been date stamped?

20           A.       It could be human error.

21           Q.       Who certified and signed that DMR?

22                   MR. JAWGIEL: I'm going to object to  
23 the foundation, your Honor.

24                   HEARING OFFICER SUDMAN: Overruled.

1                   THE WITNESS: Richard J. Frederick,  
2                   vice president of Skokie Valley Asphalt  
3                   Company, Incorporated.

4 BY MR. COHEN:

5                   Q.       Directing your attention to  
6 Complaint's Exhibit No. 3, do you recognize that  
7 exhibit?

8                   A.       That's the December 1990 discharge  
9 monitoring report form for Skokie Valley Asphalt  
10 Company.

11                  Q.       And when was that DMR received by the  
12 Illinois EPA?

13                  A.       April 25, 1991.

14                  Q.       By the way, when was that DMR due to  
15 the Illinois EPA?

16                  A.       January 15, 1991.

17                  Q.       Who signed and certified that DMR?

18                  A.       Richard J. Frederick, vice president  
19 of Skokie Valley Asphalt Company.

20                  Q.       Other than the dates, is the data  
21 contained in Skokie Valley Asphalt's November 1990  
22 DMR, which was Complainant's Exhibit No. 2,  
23 identical to the data contained in its  
24 December 1990 DMR, Complainant's Exhibit

1 No. 3?

2 MR. JAWGIEL: Your Honor, I'm going to  
3 object. The document speaks for itself.

4 HEARING OFFICER SUDMAN: Overruled.

5 You can answer.

6 THE WITNESS: Yes, it's identical.

7 BY MR. COHEN:

8 Q. But for the dates on those two  
9 documents, do the copies appear to be identical?

10 MR. JAWGIEL: I'm going to object,  
11 your Honor, with respect to foundation.  
12 This individual has not been qualified as an  
13 expert in determining the photocopying  
14 qualities of two different documents.

15 HEARING OFFICER SUDMAN: That's true,  
16 but the Board is able to weigh his testimony  
17 and see for themselves, so I'll allow him to  
18 answer to the extent that he's able with his  
19 credentials.

20 THE WITNESS: The documents look  
21 identical.

22 BY MR. COHEN:

23 Q. Directing your attention to  
24 Complainant's Exhibit No. 4, do you recognize that?

1           A.       It's the discharge monitoring report  
2 form submitted for January 1991 by Skokie Valley  
3 Asphalt Company.

4           Q.       When was that discharge monitoring  
5 report due to the Illinois EPA?

6           A.       February 15, 1991.

7           Q.       And when was that document received by  
8 the Illinois EPA?

9           A.       April 25, 1991.

10          Q.       Who signed and certified that  
11 document?

12          A.       Richard J. Frederick, vice president  
13 of Skokie Valley Asphalt Company.

14          Q.       Directing your attention to  
15 Complainant's Exhibit No. 5, do you recognize that  
16 document?

17          A.       It is the February 1991 discharge  
18 monitoring report form for Skokie Valley Asphalt  
19 Company.

20          Q.       When was that received by the Illinois  
21 EPA?

22          A.       February 28, 1991.

23          Q.       Who signed and certified that

24 document?

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1 A. Richard J. Frederick, vice president  
2 of Skokie Valley Asphalt Company.

3 Q. Other than the dates on Complainant's  
4 Exhibits 4 and 5, Skokie Valley Asphalt DMRs for  
5 January 1991 and February 1991, is the data  
6 contained in both DMRs identical?

7 A. Yes, it is.

8 Q. But for the dates, do the copies  
9 appear to be identical?

10 MR. JAWGIEL: Objection, your Honor,  
11 foundation. This witness has not been  
12 qualified as an expert to determine whether  
13 or not the copies of two different documents  
14 are identical.

15 HEARING OFFICER SUDMAN: I'm  
16 overruling that for the same reason as  
17 before.

18 THE WITNESS: Yes, it's identical.

19 BY MR. COHEN:

20 Q. Is it unusual to get DMRs from the  
21 same company with identical scientific data two  
22 months in a row?

23 MR. JAWGIEL: Your Honor, objection.  
24 He hasn't laid the foundation with respect to

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1 the frequency of that occurrence, his  
2 experience with that, his review of the DMRs  
3 during this period of time, et cetera. He  
4 has not laid the proper foundation for that  
5 opinion.

6 HEARING OFFICER SUDMAN: Overruled.

7 THE WITNESS: Yes, it is unusual.

8 BY MR. COHEN:

9 Q. Why do you say it's unusual?

10 A. Because there are many variables in  
11 the -- weather could have an effect. Sampling  
12 procedures and testing procedures could all be  
13 variables and result in different values reported on  
14 discharge monitoring report forms.

15 Q. Referring back to Skokie Valley  
16 Asphalt's NPDES permit, IL-0065005, Complainant's  
17 Exhibit No. 1, when did Skokie Valley Asphalt's  
18 permit expire?

19 A. March 1, 1991.

20 Q. According to their permit, when did  
21 Skokie Valley Asphalt have to reapply for their

22 permit if they wanted to continue to discharge  
23 waters of the State after March 1, 1991?

24 A. Well, 180 days prior to the expiration

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1 date.

2 Q. Did Skokie Valley Asphalt reapply for  
3 their NPDES permit 180 days before March 1, 1991?

4 A. No, they didn't.

5 Q. Directing your attention to  
6 Complainant's Exhibit No. 6, do you recognize that  
7 document?

8 A. It's a permit renewal application  
9 submitted for Skokie Valley Asphalt Company, permit  
10 number IL-0065005.

11 Q. When was that permit renewal  
12 application received by the Illinois EPA?

13 A. June 5, 1991.

14 Q. And who submitted that application?

15 A. Edwin L. Frederick, Jr., president of  
16 Skokie Valley Asphalt Company.

17 Q. Did he also sign that application?

18 A. Yes, he did.

19 Q. Now, was that permit renewal  
20 application received by the compliance assurance

21 section?

22 A. Yes, it was.

23 Q. Why did Skokie Valley Asphalt send the  
24 compliance assurance section its permit renewal

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1 application?

2 MR. JAWGIEL: Your Honor, I'm going  
3 to object. That asks for speculation on the  
4 state of mind and reasoning behind this from  
5 another entity. He's asking this individual  
6 why Skokie Valley did something and I don't  
7 think this individual can speak for Skokie  
8 Valley.

9 HEARING OFFICER SUDMAN: What was your  
10 question?

11 MR. COHEN: My question was why did  
12 Skokie Valley Asphalt Company send the permit  
13 renewal application to the compliance  
14 assurance section.

15 HEARING OFFICER SUDMAN: I'll allow  
16 it -- as opposed to sending it anywhere else?

17 MR. COHEN: Correct.

18 HEARING OFFICER SUDMAN: I'll allow  
19 that.

20 THE WITNESS: It was requested of  
21 Skokie Valley to send it to the compliance  
22 assurance section and a compliance inquiry  
23 letter to them in April of 1991.

24 MR. JAWGIEL: Your Honor, is he

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1 looking at that letter as we speak?

2 HEARING OFFICER SUDMAN: He appears to  
3 be.

4 MR. JAWGIEL: Are you looking at the  
5 letter, sir?

6 HEARING OFFICER SUDMAN: Exhibit 6?

7 MR. JAWGIEL: Exhibit 6 is not the  
8 letter.

9 HEARING OFFICER SUDMAN: Oh.

10 MR. JAWGIEL: Exhibit 6 is the renewal  
11 application form.

12 HEARING OFFICER SUDMAN: Isn't that  
13 what you were talking about?

14 MR. COHEN: Correct.

15 MR. JAWGIEL: But this witness said --  
16 I want to know what exhibit is in front of  
17 him because he has a whole stack of exhibits.  
18 My concern is he's reviewing an exhibit that

19           hasn't been admitted at this point in time.

20                       HEARING OFFICER SUDMAN:  What exhibit  
21           are you reviewing, sir?

22                       THE WITNESS:  The permit renewal  
23           application form.

24                       HEARING OFFICER SUDMAN:  Okay.  And

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1           that's what you were talking about?

2                       THE WITNESS:  No.

3                       HEARING OFFICER SUDMAN:  No, that's  
4           not what you were talking about?

5                       THE WITNESS:  No.

6                       HEARING OFFICER SUDMAN:  What were you  
7           talking about?

8                       THE WITNESS:  About a compliance  
9           inquiry letter that --

10                      HEARING OFFICER SUDMAN:  Okay.  So  
11           that was not the subject of this question; is  
12           that correct?  Can we back up a little bit  
13           and just start again?

14                      MR. COHEN:  Yes.

15           BY MR. COHEN:

16                      Q.       Mr. Garretson, is it unusual for a  
17           company to send a permit renewal application to the

18 compliance assurance section instead of the permit  
19 section?

20 MR. JAWGIEL: Objection, your Honor.

21 That goes beyond his 213 disclosures.

22 HEARING OFFICER SUDMAN: Overruled.

23 THE WITNESS: It's not unusual when  
24 it's requested in a compliance inquiry

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1 letter.

2 BY MR. COHEN:

3 Q. Why did Skokie Valley Asphalt Company  
4 send the compliance assurance section its permit  
5 renewal application?

6 MR. JAWGIEL: Same objection, your  
7 Honor, with respect --

8 HEARING OFFICER SUDMAN: Would you  
9 like to make a standing objection to that?

10 MR. JAWGIEL: Please. Thank you.

11 HEARING OFFICER SUDMAN: Please  
12 continue.

13 THE WITNESS: Because it was requested  
14 in a compliance inquiry letter to Skokie  
15 Valley.

16 BY MR. COHEN:

17 Q. You're not looking at this letter, are  
18 you?

19 A. No, I'm not.

20 Q. Do you know why such a letter was sent  
21 to Skokie Valley Asphalt Company?

22 A. Because the permit had expired and the  
23 permit application had not been received.

24 Q. And that would be something that would

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1 be the responsibility of your unit?

2 A. That's correct.

3 Q. If the permit section needs additional  
4 information related to a permit renewal application,  
5 would the compliance assurance section have any  
6 responsibility for that?

7 A. No.

8 Q. Directing your attention to  
9 Complainant's Exhibit No. 7, it appears to be a  
10 submittal of additional information. As I  
11 understand it, your unit would not be involved with  
12 this?

13 A. That's correct.

14 Q. Earlier you mentioned that DMRs are  
15 logged in at the division of water pollution control

16 compliance assurance section and I'm talking about  
17 late '80s, early '90s. Can you describe the  
18 procedure in a little more detail?

19 A. As DMRs are received in the compliance  
20 assurance section, the mail is opened, the DMRs are  
21 date stamped, then they are given to an individual  
22 who makes a record of the DMR submissions in what we  
23 call discharge -- DMR submission records.

24 Q. What is a DMR submission record?

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1 A. It's a logbook of a list of NPDES  
2 permit numbers where the dates of DMR submissions  
3 are recorded.

4 Q. Now, is this the procedure that's  
5 still at the agency?

6 A. No. We started doing an electronic  
7 log in, I believe, it was 1987.

8 Q. And I know we're talking about --

9 A. I apologize. That's 1997.

10 Q. Okay. I know we're talking  
11 15 years ago, but does the Illinois EPA still have  
12 some of those logbooks from back then?

13 A. Yes, we do.

14 Q. Directing your attention to

15 Complainant's Exhibit No. 8, do you recognize that  
16 exhibit?

17 A. Yes. These are the sheets out of the  
18 DMR submission records which contain the Skokie  
19 Valley NPDES permit number, yes.

20 Q. And did those sheets come from the  
21 logbooks that you were able to find?

22 A. Yes, they do.

23 Q. And did you photocopy those pages from  
24 logbooks?

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1 A. Yes, I did.

2 Q. What years of the logbooks were you  
3 able to find and are included in that exhibit?

4 A. I found 1986, 1987, 1988, 1989, 1990,  
5 1991, 1992, 1993, and 1996.

6 Q. Excuse me. I asked about the exhibit.  
7 Is 1986 included in your copy of the exhibit?

8 A. No, it's not.

9 Q. And for the record, these pages in  
10 Complainant's Exhibit No. 8 are also lettered.

11 Could you go through the years and  
12 say what the letter of each page is, please?

13 A. Okay. 1987 is 8A; 1988 is 8B; 1989 is

14 8C; 1990 is 8D; 1991 is 8E; 1992 is 8F; 1993 is 8G;  
15 and 1996 is 8H.

16 Q. Thank you.

17 You mentioned earlier that Skokie  
18 Valley Asphalt's NPDES permit became effective in  
19 May of 1986, correct?

20 A. Yes.

21 Q. Do you have any records of which DMRs  
22 Skokie Valley Asphalt submitted in 1986?

23 A. There's no record of submissions of  
24 DMRs in 1986.

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1 Q. Which DMRs did Skokie Valley Asphalt  
2 submit in 1987?

3 A. There's no DMR submission records for  
4 the -- submissions by Skokie Valley in 1987.

5 Q. Can you describe for the Board how you  
6 are using Complainant's Exhibit 8A in your answer to  
7 that question?

8 A. Okay. I'm finding the entry for  
9 Skokie Valley Asphalt Company. There are places on  
10 the sheet labeled 01 through 12 where they represent  
11 months and in those places we log the date that the  
12 DMR was received for that month in the DMR

13 submission record.

14 Q. And at least on Complainant's  
15 Exhibit 8A, the Skokie Valley Asphalt name is  
16 approximately halfway down the page, would that be  
17 correct?

18 A. That's correct.

19 Q. And there's also a number to the left  
20 of Skokie Valley Asphalt. What does that number  
21 represent?

22 A. That number represents the NPDES  
23 permit number for Skokie Valley.

24 Q. Did Skokie Valley Asphalt submit any

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1 DMRs in 1988?

2 MR. JAWGIEL: I'm just going to  
3 object. Is it according to this record that  
4 he's basing his opinion on I assume? Form of  
5 the question is my objection.

6 HEARING OFFICER SUDMAN: What's your  
7 objection?

8 MR. JAWGIEL: My objection is form of  
9 the question.

10 HEARING OFFICER SUDMAN: Would you

11           like to rephrase the question, Mr. Cohen?

12                       MR. JAWGIEL: I assume it's based on  
13           these reports.

14                       HEARING OFFICER SUDMAN: I would  
15           assume as well, but would you like to  
16           clarify?

17 BY MR. COHEN:

18           Q.       Referring to Complainant's  
19           Exhibit No. 8B, did the Illinois EPA have any record  
20           of Skokie Valley Asphalt submitting any DMRs in  
21           1988?

22           A.       The records show that they submitted  
23           the November and December DMRs in 1988.

24           Q.       Just those two?

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1           A.       Yes.

2           Q.       According to Complainant's Exhibit 8C,  
3           in 1989 did Skokie Valley Asphalt fail to submit any  
4           of their monthly DMRs?

5                       MR. JAWGIEL: Your Honor, I'm going  
6           to object. This is not germane to the issues  
7           that are in the complaint. This is not one  
8           of the issues that was brought before you  
9           here today.

10 HEARING OFFICER SUDMAN: Would you  
11 care to respond to that, Mr. Cohen?

12 MR. COHEN: I believe Count III.

13 HEARING OFFICER SUDMAN: I'm going to  
14 overrule that objection.

15 THE WITNESS: The record shows that  
16 DMRs were not received for April, June,  
17 August, September, October, November or  
18 December of 1989.

19 BY MR. COHEN:

20 Q. According to the Complainant's  
21 Exhibit 8D, in 1999 did Skokie Valley Asphalt fail  
22 to submit any of their monthly DMRs?

23 A. There's no record for a September 1990  
24 DMR for Skokie Valley.

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1 Q. And according to Complainant's  
2 Exhibit 8F, in 1992 did Skokie Valley Asphalt fail  
3 to submit any of their monthly DMRs?

4 A. There's no record of receiving the  
5 July 1992 DMR from Skokie Valley Asphalt.

6 Q. Referring back to Complainant's  
7 Exhibit No. 1, Skokie Valley Asphalt's NPDES permit,  
8 are there concentration limits listed in the permit

9 for total suspended solids?

10 MR. JAWGIEL: Your Honor, I'm going  
11 to object. That goes beyond the scope of his  
12 213 disclosures.

13 HEARING OFFICER SUDMAN: Overruled.

14 THE WITNESS: Could you repeat?

15 BY MR. COHEN:

16 Q. According to their NPDES permit, are  
17 there concentration limits listed in the permit for  
18 total suspended solids?

19 A. Yes, there are.

20 Q. What are the concentration limits?

21 A. It's 15 milligrams per liter as a  
22 30-day average and 30 milligrams per liter as a  
23 daily maximum.

24 Q. Directing your attention to

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1 Complainant's Exhibit No. 9, do you recognize that  
2 document?

3 A. It's the August 1991 DMR for Skokie  
4 Valley Asphalt Company.

5 Q. And who is that signed and certified  
6 by?

7 A. Richard J. Frederick, vice president

8 of Skokie Valley Asphalt Company.

9 Q. And what does Skokie Valley Asphalt  
10 Company report as their 30-day average concentration  
11 for total suspended solids?

12 A. Fifty-five milligrams per liter.

13 Q. And what does Skokie Valley Asphalt  
14 Company report as their daily maximum concentration  
15 for total suspended solids?

16 A. Fifty-five milligrams per liter.

17 Q. Directing your attention to  
18 Complainant's Exhibit No. 10, do you recognize that  
19 document?

20 A. It's the September 1991 discharge  
21 monitoring report form for Skokie Valley Asphalt  
22 Company.

23 Q. Who signed and certified that  
24 document?

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1 A. Richard J. Frederick, vice president  
2 of Skokie Valley Asphalt.

3 Q. What does Skokie Valley Asphalt  
4 Company report as their 30-day average concentration  
5 for total suspended solids?

6 A. Twenty-five milligrams per liter.

7 Q. Directing your attention to  
8 Complainant's Exhibit No. 11, do you recognize that  
9 document?

10 A. It's the October 1991 discharge  
11 monitoring report form for Skokie Valley Asphalt  
12 Company.

13 Q. What does Skokie Valley Asphalt  
14 Company report as their 30-day average for total  
15 suspended solids?

16 A. Forty-one milligrams per liter.

17 Q. What does Skokie Valley Asphalt  
18 Company report as their daily maximum for total  
19 suspended solids?

20 A. Forty-one milligrams per liter.

21 Q. Complainant's Exhibit No. 12, do you  
22 recognize that?

23 A. It's the February 1992 discharge  
24 monitoring report form for Skokie Valley Asphalt

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1 Company.

2 Q. What does Skokie Valley Asphalt  
3 Company report as their 30-day average for total  
4 suspended solids?

5 A. Eighteen milligrams per liter.

6 Q. Complainant's Exhibit No. 13, do you  
7 recognize that?

8 A. It's the November 1992 discharge  
9 monitoring report form for Skokie Valley Asphalt  
10 Company.

11 Q. What does Skokie Valley Asphalt report  
12 as their 30-day average concentration for total  
13 suspended solids?

14 A. Twenty-two milligrams two per liter.

15 Q. Complainant's Exhibit No. 14, do you  
16 recognize that?

17 A. It's the December 1992 discharge  
18 monitoring report form for Skokie Valley Asphalt  
19 Company.

20 Q. What does Skokie Valley Asphalt  
21 Company report as their 30-day average for total  
22 suspended solids?

23 A. Twenty-four milligrams per liter.

24 Q. Complainant's Exhibit No. 15, what is

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1 that?

2 A. It's the May 1993 discharge monitoring  
3 report form for Skokie Valley Asphalt Company.

4 Q. What does Skokie Valley Asphalt report

5 as their 30-day average for total suspended solids?

6 A. Twenty-four milligrams per liter.

7 Q. Complainant's Exhibit No. 16, what is  
8 that?

9 A. This is a discharge monitoring report  
10 form for June 1993.

11 Q. What does Skokie Valley report as  
12 their 30-day average for total suspended solids?

13 A. Thirty-five milligrams per liter.

14 Q. And what does Skokie Valley Asphalt  
15 Company report as their daily maximum concentration  
16 for total suspended solids?

17 A. Thirty-five milligrams per liter.

18 Q. Complainant's Exhibit No. 17, what is  
19 that?

20 A. It's the April 1995 discharge  
21 monitoring report form for Skokie Valley Asphalt  
22 Company.

23 Q. What does Skokie Valley Asphalt report  
24 as their 30-day average concentration for total

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1 suspended solids?

2 A. 126 milligrams per liter.

3 Q. And what does Skokie Valley Asphalt

4 report as their daily maximum concentration for  
5 total suspended solids?

6 A. 126 milligrams per liter.

7 Q. Mr. Garretson, are all the  
8 concentrations Skokie Valley Asphalt reported for  
9 total suspended solid concentrations in  
10 Complainant's Exhibit Nos. 9 through 17 that I just  
11 asked you to read in excess of the concentrations  
12 allowed in Skokie Valley Asphalt's NPDES permit?

13 MR. JAWGIEL: Your Honor, I'm going to  
14 object as far as a legal conclusion.

15 HEARING OFFICER SUDMAN: I'll allow  
16 him to answer to the extent that he's able.

17 THE WITNESS: Yes, they are  
18 violations.

19 BY MR. COHEN:

20 Q. And with regard to Complainant's  
21 Exhibit Nos. 1 through 6 and 8 through 17, are all  
22 those records kept in the ordinary course of  
23 Illinois EPA business?

24 A. Yes, they are.

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1 Q. And are all those exhibits true and  
2 correct copies of the Illinois EPA records?

3 A. Yes, they are.

4 MR. COHEN: May I have one moment?

5 HEARING OFFICER SUDMAN: Okay.

6 MR. COHEN: Just for clarity, I just  
7 want to straighten out -- I think I misspoke  
8 in my last couple of questions.

9 HEARING OFFICER SUDMAN: Okay.

10 BY MR. COHEN:

11 Q. Mr. Garretson, with regard to  
12 Complainant's Exhibits 1 through 6 and 8 through 17,  
13 are those records kept in the ordinary course of  
14 Illinois EPA business?

15 A. 1 through 6 and -- I'm sorry?

16 Q. 8 through 17.

17 A. Yes, they are.

18 Q. And are those true and correct copies  
19 of those records?

20 A. Yes, they are.

21 MR. JAWGIEL: Your Honor, if I may,  
22 with respect to Count III, according to the  
23 State, they say that this information is  
24 relevant. Count III does not address the

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1 missing DMR. Count III addresses that levels

2           were reported inaccurately. I can show you  
3           my copy to make it convenient for you, but  
4           the information is not relevant.

5                       HEARING OFFICER SUDMAN: I was under  
6           the impression Count III did also include  
7           some missing reports but --

8                       MR. JAWGIEL: Some, but not all of  
9           those dates that they were going through.

10                      HEARING OFFICER SUDMAN: Would you  
11           like to respond to that Mr. Cohen?

12                      MR. COHEN: Yes, there are missing  
13           reports and they are alleged in that count.

14                      MR. JAWGIEL: That is not accurate.  
15           The missing reports are not alleged in that  
16           count. What's alleged in paragraph 21, and I  
17           think is particularly what I'm referring to,  
18           is that's the count which addresses the  
19           substance of that particular count and it has  
20           nothing to do with missing reports.

21                      MR. COHEN: Paragraph 18 from the  
22           second amended complaint: Since November  
23           1988, respondents failed to submit DMRs, et  
24           cetera.

1 HEARING OFFICER SUDMAN: Does it  
2 specify dates?

3 MR. COHEN: Yes, it does.

4 Judge, I did have one final  
5 question to clarify --

6 HEARING OFFICER SUDMAN: Oh, yes.

7 MR. JAWGIEL: Your Honor, if I can  
8 have a ruling on my objection with respect to  
9 that information once you have had an  
10 opportunity, I would appreciate it.

11 HEARING OFFICER SUDMAN: And your  
12 objection was to the evidence pertaining to  
13 dates not enumerated in the complaint?

14 MR. JAWGIEL: Correct.

15 HEARING OFFICER SUDMAN: Well, is  
16 there anything else this evidence goes  
17 towards? Are you asserting that this  
18 evidence is relevant to other allegations?

19 MR. COHEN: Well, I believe it's a  
20 pattern that we're going to see throughout  
21 this trial, yes. But as far as the  
22 particular dates go, we're certainly allowed  
23 to conform the complaint to the evidence  
24 that's presented.

1 HEARING OFFICER SUDMAN: Well, it  
2 says --

3 MR. JAWGIEL: Your Honor, if I may  
4 just respond very briefly --

5 HEARING OFFICER SUDMAN: Yes.

6 MR. JAWGIEL: -- a pattern has no  
7 relevance in this particular cause of action.  
8 It's not one of the elements necessarily that  
9 needs to be presented with respect to this  
10 particular issue, on the reporting issue.

11 HEARING OFFICER SUDMAN: Well,  
12 Count III, paragraph 18 says: Since November  
13 1988, respondents failed to submit DMRs to  
14 the Illinois EPA for the following months:  
15 November 1988, April '89, June '89, August  
16 '89, October '89, November '89, December '89,  
17 and July of '92.

18 MR. JAWGIEL: And counsel went into  
19 '86 and '87. He went into dates that were  
20 beyond this paragraph.

21 HEARING OFFICER SUDMAN: Well, but  
22 then it also -- I mean, are those dates  
23 relevant to any other allegations in this  
24 complaint, Mr. Cohen?

1                   MR. COHEN: Yes. I think it's going  
2 to show a pattern of noncompliance by the  
3 respondents.

4                   HEARING OFFICER SUDMAN: Towards which  
5 count or which allegation specifically?

6                   MR. COHEN: Well, I think you'll see  
7 it come up in the water pollution count and  
8 we do allege failure to comply with reporting  
9 requirements. We are allowed to conform the  
10 complaint at any time to match the evidence,  
11 so I do believe that evidence is relevant and  
12 certainly admissible.

13                   MR. JAWGIEL: Your Honor, the water  
14 pollution count has nothing to do with this  
15 particular reporting because they're talking  
16 about oily substances and they're talking  
17 apples and oranges. This is typical of this  
18 particular case; it's done by smoke in  
19 mirrors.

20                   HEARING OFFICER SUDMAN: Well, here's  
21 what I'm going to do since you don't point me  
22 to a particular allegation in the complaint:  
23 I'm going to certainly allow the evidence  
24 with respect to the dates specified in the

1 complaint. The other evidence we'll do as an  
2 offer of proof.

3 Now, what was your question on  
4 clarification?

5 MR. COHEN: I'm going to leave it  
6 alone, your Honor.

7 HEARING OFFICER SUDMAN: Okay.

8 Mr. Jawgiel, your witness?

9 MR. JAWGIEL: Thank you, your Honor.

10 C R O S S - E X A M I N A T I O N

11 BY MR. JAWGIEL:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. I apologize if I have you jump around  
15 from place to place, but I'm trying to cover certain  
16 areas that may have been covered.

17 You talked a little about the  
18 logging procedures that were performed back in the  
19 late 1980s, early 1990s and I think you indicated it  
20 was done by hand; is that correct?

21 A. That's correct.

22 Q. Were there any quality assurance  
23 procedures instituted by your department at that  
24 point in time to determine whether or not the people

1 who were actually logging the information were doing  
2 so correctly?

3 A. I'm not aware of any formal quality  
4 assurance procedures.

5 Q. So as you sit here today, you don't  
6 know whether or not the logs that were presented in  
7 here as exhibits, I believe, 8A through 8H are true  
8 and accurate representations of the actual reports,  
9 the DMR reports, submitted by anybody listed on  
10 those pages; is that correct?

11 A. Would you repeat the question?

12 Q. Sure.

13 As you sit here today, you would  
14 have no opinion whether or not the information  
15 contained in State's Exhibits 8A through 8H are true  
16 and accurate with respect to the information  
17 contained therein?

18 A. I believe they are correct.

19 Q. Well, have you ever logged reports  
20 during that period of time of 1987 through 1996  
21 yourself, sir?

22 A. No.

23 Q. And you never checked to determine  
24 whether or not all the information contained on

1 these forms are accurate by going back into the  
2 files of all the companies listed here and  
3 determining whether or not the information is  
4 accurate; is that correct?

5 A. That's correct.

6 Q. So as you sit here today, you really  
7 have no basis other than you think that your  
8 procedures were followed; is that correct?

9 A. Well, I know the log person was  
10 trained in the -- you know, how to do it.

11 Q. Well, you also admitted I think on the  
12 stand that there's human error as a factor?

13 A. That's true.

14 Q. And human error can mean that certain  
15 reports weren't reported; is that correct?

16 A. It's possible.

17 Q. In your 24 years in the compliance  
18 department, have you ever been involved in a  
19 situation where a report was mislogged?

20 A. I don't recall of any specific --  
21 well, I take that back. It does happen.

22 Q. Okay. And you indicated you're in the  
23 compliance departments, but is it your department's  
24 responsibility to review the DMRs?

1 A. Yes.

2 Q. And who in the department actually  
3 reviews the DMRs?

4 A. The compliance specialist in that  
5 department as well as the people in the field  
6 operations section.

7 Q. Okay. Who was the compliance  
8 specialist from the department during the years of  
9 1987 through 1996?

10 A. I believe that was Jan Hopper.

11 Q. And what duties did Ms. Hopper have  
12 with respect to reviewing the DMRs?

13 A. Well, she would look at the DMRs,  
14 compare it to the NPDES permit to determine if  
15 violations existed.

16 Q. Okay. And I take it if she didn't  
17 receive a DMR report for a period of time that was  
18 listed on the permit that she was supposed to do  
19 something; is that correct?

20 A. Could you repeat the question?

21 Q. Sure. I'll rephrase it.

22 If she did not receive a DMR  
23 report from somebody who had an NPDES permit, she

24 was supposed to report that to somebody; is that

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1 correct?

2 A. Not in all cases.

3 Q. Well, how about in most cases?

4 A. Well, if it appeared to be a pattern  
5 of nonsubmission, then compliance inquiry letters  
6 were preferred.

7 Q. Okay. Do you have any compliance  
8 inquiry letters that were sent to Skokie Valley with  
9 you here today?

10 A. I don't, no.

11 Q. Okay. So as we sit here today, you  
12 don't think that there was a pattern of  
13 noncompliance because you don't have any  
14 documentation that your department took any steps to  
15 move Skokie Valley to comply; is that correct?

16 MR. COHEN: Object to the form of the  
17 question.

18 HEARING OFFICER SUDMAN: I think it's  
19 okay. He can answer. It was kind of a  
20 compound question. Could you break that up a  
21 little bit?

22 MR. JAWGIEL: Sure.

23 BY MR. JAWGIEL:

24 Q. You reviewed the Skokie Valley file

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1 before coming here today, did you not?

2 A. Yes, I did.

3 Q. And you took out all the information  
4 out of the Skokie Valley file that you thought was  
5 pertinent to this case and gave it over to the  
6 State; is that correct?

7 A. No.

8 Q. Well, did you allow the State to  
9 review the file?

10 A. Yes.

11 Q. And did you in your review of the file  
12 make copies for the State yourself?

13 A. Yes, of the DMR submission records.

14 Q. Okay. Did the State ask you at any  
15 point in time to give them the compliance letters --

16 A. No.

17 Q. -- that you had referred to?

18 A. No.

19 Q. With respect to the permit itself,  
20 sir, I believe it's Exhibit No. 1 -- if you need to  
21 refer to that, please take a look at it. We're not

22 going to test your memory.

23                                 With respect to the permit itself,  
24 the permittee in this case is Skokie Valley; isn't

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1 that correct?

2             A.       Skokie Valley Asphalt Company,  
3 Incorporated.

4             Q.       So the permittee, Skokie Valley  
5 Asphalt Company, Incorporated, is the one who holds  
6 the permit, is that correct, in your opinion?

7             A.       That's correct.

8             Q.       Skokie Valley Asphalt Company, Inc. --  
9 if I just call them Skokie Valley, you know what  
10 we're talking about?

11            A.       Yes.

12            Q.       Okay. With respect to Skokie Valley,  
13 it's Skokie Valley who's responsible for reporting  
14 the DMRs; is that correct?

15            A.       That's correct.

16            Q.       The permittee is not Edwin or  
17 Larry Frederick, is it?

18            A.       The permittee is Skokie Valley Asphalt  
19 Company.

20            Q.       Okay. So with respect to -- we'll

21 call him Larry Frederick, he goes by Larry --  
22 Mr. Larry Frederick wouldn't have responsibilities  
23 individually for reporting the DMRs, would he?

24 A. Well, the DMRs do contain a

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1 certification that must be signed by an individual  
2 such as them as to the accuracy of the DMRs and the  
3 information contained in there.

4 Q. But it's not the responsibility of the  
5 individual under the permit who signs the DMR to  
6 submit the DMR, it's the permittee's responsibility;  
7 isn't that correct?

8 A. Whoever signs the DMR has to make sure  
9 that whatever is contained in the DMR is correct.

10 Q. Well, you're kind of putting the cart  
11 before the horse, sir. Before we even have somebody  
12 certifying the content of the DMR, there's a  
13 requirement that a DMR be submitted under the  
14 permit; is that correct?

15 A. That's correct.

16 Q. And based on your 24 years of  
17 knowledge of the permit, the entity responsible for  
18 even submitting the DMR is Skokie Valley in this  
19 case; is that correct?

20           A.       Yes, a representative of Skokie Valley  
21 has to do the submissions.

22           Q.       Well, but the responsible entity is  
23 Skokie Valley to submit the DMRs whether it's signed  
24 by Larry Frederick or signed by Richard Frederick or

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1 signed by someone else who is in that position, it  
2 doesn't matter; is that correct?

3           A.       Well, ultimately you would think an  
4 individual has to submit the discharge monitoring  
5 report form.

6           Q.       Well, let me ask you this question  
7 since you're familiar with the permit: Where in the  
8 permit does it make any individual responsible who  
9 is not the named permittee for submitting the DMR?

10          A.       Could you repeat the question?

11          Q.       Sure.

12                    Where in the language of the  
13 permit that was issued to Skokie Valley is there any  
14 language which makes an individual responsible who  
15 is not the permittee, the named permittee, for  
16 filing or submitting the DMR?

17          A.       Can I take a look at the --

18          Q.       Sure. Go right ahead.

19           A.       Okay.  I'd like to refer you to  
20 item 11 of special conditions attachment H.  
21           Q.       H did you say, sir?  
22           A.       Attachment H, 11B.  
23                    MR. JAWGIEL:  May I approach the  
24 witness?

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1                   HEARING OFFICER SUDMAN:  Sure.  
2                   THE WITNESS:  Can I read from this?  
3 BY MR. JAWGIEL:  
4           Q.       Sure.  
5           A.       It says:  All reports required by  
6 permits or other information requested by the agency  
7 shall be signed by a person described in paragraph A  
8 or by a duly authorized representative of that  
9 person.  
10                   The person is a duly authorized  
11 representative only if the authorization is made in  
12 writing by person described in paragraph A and the  
13 authorization specifies either an individual or  
14 position responsible for the overall operation of  
15 the facility from which the discharge originates  
16 such as the plant manager, superintendent or -- and  
17 that's where my copy stops.

18 Q. Okay. Now, maybe you're  
19 misunderstanding my question. My question is not to  
20 who has to authorize the DMRs. I think that's what  
21 you're addressing with respect to this paragraph.

22 My question to you is -- before we  
23 even get to the point of having to submit a DMR,  
24 there's a requirement in the permit that a DMR be

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1 submitted, period, not that it be authenticated but  
2 that it actually be submitted. Where in the permit  
3 language does it require anyone other than the named  
4 permittee to have to submit a DMR?

5 A. The NPDES permit requires a permittee  
6 to submit the DMR.

7 Q. Okay. The named permittee; is that  
8 correct?

9 A. It doesn't say named permittee but --

10 Q. But that's your understanding?

11 A. It says that the permittee shall  
12 submit the discharge monitoring report form.

13 Q. Okay. Now, let's talk about the  
14 discharge monitoring reports that are signed. Let's  
15 look at Exhibit 3 just for an example. You'll see  
16 that it says here in the certification between

17 identifying Richard Frederick, vice president, and  
18 the date and then a signature area that: I certify  
19 I am familiar with the information contained in this  
20 report and that to the best of my knowledge and  
21 belief such information is true, complete and  
22 accurate. Is that your understanding of what the  
23 certifications say, sir?

24 A. That's what it says.

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1 Q. The certification doesn't require the  
2 signator to verify the information, it just asked  
3 them to report to the best of their knowledge; isn't  
4 that correct?

5 A. That's correct.

6 Q. Okay. Sir, let's talk a little bit  
7 more about what we see in these DMR reports. I  
8 think the reports you identified during the State's  
9 case -- we went through a number of exhibits which  
10 show that there was a higher level than permitted by  
11 the permit itself and that's going to be the area  
12 that I'm going to talk about just to get you up to  
13 where I am with these questions.

14 You had indicated earlier there  
15 are certain factors that can affect the levels that

16 are in the DMRs, weather can be one, technique in  
17 how you take the sampling. Other factors can be  
18 involved as well; is that correct?

19 A. That's correct.

20 Q. What are some of those other factors  
21 that affected the DMR level reporting?

22 A. Testing procedures.

23 Q. Okay. And what else other than  
24 testing procedures, weather, what else can affect

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1 those levels?

2 A. I'm not really sure.

3 Q. Have you ever worked in the field,  
4 sir?

5 A. Yes, I have.

6 Q. Okay. So you've had some experience  
7 with conditions that are in the field; is that  
8 correct?

9 A. I've never worked in the field  
10 operations section, no.

11 Q. Okay. So you've never been out in the  
12 field to determine whether or not there may be other  
13 factors that are actually in a site that could

14 affect the levels; is that correct?

15 A. Not while I was working at the EPA.

16 Q. Okay. Have you ever had that  
17 experience?

18 A. Prior to becoming -- or prior to  
19 working with the Illinois EPA, I worked at an  
20 industrial waste farm treatment plant in Champaign,  
21 Illinois.

22 Q. Okay. But that would be the limit of  
23 your experience is a waste treatment plant in  
24 Champaign, Illinois?

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1 A. Yes.

2 Q. You haven't worked in areas where  
3 there is farmland necessarily adjacent to an asphalt  
4 plant or anything along those lines; is that  
5 correct?

6 A. That's correct.

7 Q. So as you sit here today, you wouldn't  
8 know what factors may or may not affect the DMRs  
9 submitted by Skokie Valley because you've never been  
10 out in the field to decide whether or not there may  
11 be other contributing factors other than weather and  
12 the way it's tested; is that correct?

13 A. That's correct.

14 Q. Now, again, referring you back to  
15 Exhibit No. 3, you'll see that there's also a note  
16 in the comment section. And the DMR allows for  
17 comments to explain what's in the DMR; is that  
18 correct?

19 A. That's correct.

20 Q. And the whole purpose of that section  
21 is so that the people who are testing can advise  
22 maybe of an unusual situation that may affect the  
23 reporting or whatever they want to put in there; is  
24 that correct?

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1 A. That's correct.

2 Q. And you can see that there's a comment  
3 that says: High content of total suspended solids  
4 was rated very high due to amount of rain that we  
5 had because of runoff of adjoining farmland field --  
6 and so on and so forth -- that adjoins our property.  
7 Do you see that comment?

8 A. Yes, I do.

9 Q. And that would be a situation that  
10 would affect or elevate the levels reported in the  
11 DMR; is that correct?

12 A. I suppose so.

13 Q. So looking at this report in and of  
14 itself, would that from your experience in your  
15 department raise any questions?

16 MR. COHEN: Object to the form of that  
17 question.

18 MR. JAWGIEL: Should I rephrase it?

19 HEARING OFFICER SUDMAN: Yeah, please.

20 MR. JAWGIEL: Sure. No problem.

21 BY MR. JAWGIEL:

22 Q. With respect to Exhibit 3, as we look  
23 at it in total, based on your experience in your  
24 department, would what we see in Exhibit No. 3 cause

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1 your department to take any remedial action?

2 MR. COHEN: Objection to the form of  
3 the question and the use of the word  
4 remedial.

5 HEARING OFFICER SUDMAN: I think he  
6 can answer it. If you don't know, you can  
7 say you don't know.

8 THE WITNESS: Well, the NPDES permit  
9 doesn't say that limits only need to be met  
10 when there's not any rainfall.

11 BY MR. JAWGIEL:

12 Q. That wasn't my question, though, sir?

13 MR. JAWGIEL: And I ask that his  
14 answer be struck from the record as  
15 nonresponsive.

16 HEARING OFFICER SUDMAN: I agree.  
17 Please answer the question. Do you need him  
18 to ask again?

19 THE WITNESS: That would be helpful.

20 MR. JAWGIEL: Sure.

21 BY MR. JAWGIEL:

22 Q. At any point in time, if you don't  
23 understand a question I ask, which may happen again,  
24 just let me know.

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1 With respect to Exhibit No. 3, as  
2 we see the report's data information in conjunction  
3 with the comment section, based on your 24 years of  
4 experience with this department would this report in  
5 and of itself merit any sort of action on your  
6 department's behalf?

7 A. One report on its own would not  
8 usually.

9 Q. Okay. Would one report on its own

10 without the comment section that we see here in  
11 Exhibit No. 3 merit any sort of action on the part  
12 of your department at all?

13 A. Usually not.

14 Q. Would two reports month to month, back  
15 to back merit any sort of action on the part of your  
16 department in it's course of handling these DMRs?

17 A. It's possible.

18 Q. Who is that left up to to decide?

19 A. The compliance individuals that are  
20 reviewing the DMRs.

21 Q. So I think it was Ms. -- what was her  
22 name? I apologize.

23 A. Ms. Hopper.

24 Q. -- Ms. Hopper and the individual who

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1 was in the field; is that correct?

2 A. It's possible.

3 Q. And what, if anything, would  
4 Ms. Hopper do if there were two reports  
5 consecutively that showed high levels -- higher than  
6 permitted by the permit?

7 A. It could consider the possibility of  
8 sending a compliance inquiry letter.

9 Q. And so we don't have a compliance  
10 inquiry letter here today, do we?

11 A. Not that I'm aware of.

12 Q. So based on what we have here today  
13 and based on your knowledge, nothing was done by the  
14 department with respect to Exhibit  
15 No. 3; is that right?

16 A. That's correct.

17 Q. Was any action taken with respect to  
18 Exhibit No. 9 by your department?

19 A. I don't know.

20 Q. And as a matter of course, your  
21 department would have reviewed Number 9, not only  
22 Ms. Hopper, but somebody else in the field as well;  
23 is that right?

24 A. Yes.

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1 Q. And based on the knowledge you have  
2 here that you don't know whether anything was done  
3 with respect to this particular report, you would  
4 have no knowledge that this  
5 report -- well, strike that question.

6 Was there any action taken by your  
7 department with respect to Exhibit No. 10?

8 A. I don't know.

9 Q. Was there any action taken by your  
10 department with respect to Exhibit No. 11?

11 A. I don't know.

12 Q. Was there any action taken by your  
13 department with respect to Exhibit No. 12?

14 A. I don't know.

15 Q. Was there any action taken on behalf  
16 of your department with respect to Exhibit No. 13?

17 A. I don't know.

18 Q. Was there any action taken on behalf  
19 of your department with respect to  
20 Exhibit 14?

21 A. I don't know.

22 Q. Was there any action taken on behalf  
23 of your department with respect to  
24 Exhibit 15?

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1 A. I don't know.

2 Q. Was there any action taken on behalf  
3 of your department with respect to  
4 Exhibit 16?

5 A. I don't know.

6 Q. Is it your understanding, sir, you're

7 here to testify as the representative of the  
8 compliance department?

9 A. Yes, that's true.

10 Q. Who in your department other than  
11 yourself would know whether or not any action was  
12 taken by your department other than what we have  
13 here today regarding Exhibits 9 through 17?

14 A. The compliance individual that would  
15 have prepared any actions.

16 Q. And they would have reported to you,  
17 sir?

18 A. At that time, they would have reported  
19 to Roger Callaway.

20 Q. The compliance individuals we talked  
21 about, Ms. Hopper, the other individual would have  
22 been Mr. Kallis?

23 A. No. Roger Callaway.

24 Q. No, the other individual who would

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1 have been in the field, was that  
2 Mr. Callaway?

3 A. No.

4 Q. Okay. The individual who would have  
5 been in the field with respect to the time period of

6 Exhibit Nos. 9 through 17 --

7 A. I'm not sure who was in the field  
8 responsible for it at that time.

9 Q. I take it, though, based on the  
10 procedures used by your department, it's your  
11 understanding that each of these reports, Exhibits 9  
12 through 17, were examined by your department?

13 A. Yes, that's true.

14 Q. When did you first become aware of  
15 these particular levels reported in Exhibits 9  
16 through 17, would it have been when you prepared  
17 documentation for this case?

18 A. That's correct.

19 Q. Do you know why Skokie Valley was  
20 required to have the NPDES permit?

21 A. No, I don't.

22 Q. Isn't the whole purpose behind having  
23 Ms. Hopper review the DMRs is so that early  
24 compliance can be adhered to; is that correct? Do

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1 you understand the question?

2 A. Yes, I do.

3 Q. Okay.

4 A. Yes, that would be a benefit.

5 Q. The whole idea behind it is that  
6 Ms. Hopper will note something, send out a letter,  
7 try to gain compliance as soon as possible; isn't  
8 that correct?

9 MR. COHEN: Objection. That question  
10 calls for speculation on the actions of what  
11 Ms. Hopper might do after her review.

12 MR. JAWGIEL: He's the head of the  
13 department.

14 HEARING OFFICER SUDMAN: He can answer  
15 if he knows what the procedures are  
16 generally.

17 THE WITNESS: Well, when we review  
18 discharge monitoring report forms, we look  
19 for a significant amount of compliance.

20 BY MR. COHEN:

21 Q. And how frequently do you review  
22 discharge monitoring reports or NPDES permit  
23 reports?

24 A. They are reviewed monthly as they come

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1 in.

2 Q. Okay. So monthly you're reviewing  
3 reports for compliance; is that correct?

4 A. Yes.

5 Q. And how many reports does your  
6 department receive, let's say, back in 1986? How  
7 many reports do they receive, DMR reports, in any  
8 given month?

9 A. I don't know the exact number.

10 Q. Would you say thousands?

11 A. I would say it would be over 2000 a  
12 month.

13 Q. And how many people do you have  
14 working on reviewing the DMR reports other than  
15 Ms. Hopper?

16 A. I don't know at that time.

17 Q. I take it -- you identified one  
18 individual who logs the reports. Was it only one  
19 person who would log over 2000 reports a month?

20 A. That's correct.

21 Q. Now, how many field representatives  
22 did you have basically in the late '80s, early '90s?

23 A. I don't know.

24 Q. Getting back to what we were talking

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1 about, isn't it the policy and procedures as you  
2 understand them of your department -- the whole

3 purpose behind reviewing the DMRs is to send out a  
4 compliance letter if the DMR is not in compliance so  
5 that you can gain compliance from the permittee as  
6 soon as possible?

7 A. That's correct.

8 Q. When did you gather these reports for  
9 the State?

10 A. Within the last month or so.

11 Q. Would it be fair to say that your  
12 department wasn't too concerned about the compliance  
13 of Skokie Valley with respect to these reports until  
14 this case?

15 MR. COHEN: Objection, augmentative.

16 HEARING OFFICER SUDMAN: Sustained.

17 BY MR. JAWGIEL:

18 Q. You said it was unusual for there to  
19 be identical information on a DMR from a permittee;  
20 is that correct?

21 A. Yes.

22 Q. Have you reviewed the series of DMRs  
23 submitted by anyone else in preparation for your  
24 testimony today other than Skokie Valley?

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1 A. Could you repeat the question, please?

2 Q. Sure.

3 In preparation for your testimony  
4 here today, have you reviewed the series of DMRs  
5 submitted by any other company other than Skokie  
6 Valley?

7 A. Yes, in the normal course of work.

8 Q. Have you literally reviewed all the  
9 reports and determined whether or not they're  
10 identical?

11 A. No, not all of the reports, but I am  
12 familiar with discharge monitoring reports.

13 Q. Well, my question to you is then, sir,  
14 you indicated it is unusual but have you -- well,  
15 let me ask you this question: Is it part of your  
16 responsibility in the position you hold in your  
17 department to review reports to determine whether or  
18 not the data contained therein is identical to any  
19 other DMR report submitted by that particular  
20 company?

21 A. It's not my specific responsibility.

22 Q. Is there anybody in the department who  
23 has that responsibility?

24 A. Well, the individuals that review the

1 reports would look for something like that.

2 Q. Okay. And the individual who would  
3 have reviewed the reports then would have sent out a  
4 compliance letter if they thought there was  
5 something suspicious about the reporting if it was  
6 identical; is that correct?

7 A. I'm assuming so.

8 Q. Do you know whether or not your  
9 department thought that the DMRs submitted by Skokie  
10 Valley with respect to the ones that had identical  
11 information was suspicious?

12 A. Back in the late '80s?

13 Q. I was talking about the period of time  
14 between the late '80s to the early '90s as counsel  
15 has framed this period of time?

16 A. I was not aware of it at that time.

17 Q. Did you become aware of it after this  
18 case for the very first time?

19 A. Yes.

20 Q. Do you have any information which  
21 would lead you to believe that Larry Frederick, also  
22 known as Ed Frederick, actually participated in  
23 taking these samples?

24 A. I don't.

1 Q. Do you have any information whether or  
2 not Richard Frederick actually took the samples that  
3 are reported in the DMR?

4 A. I don't know that either.

5 Q. Do you have any information that  
6 Larry Frederick tested the samples that were  
7 submitted in the DMR for Skokie Valley?

8 A. From reviewing the files, I know that  
9 the samples were performed -- or the tests were  
10 performed at Northshore Sanitary District.

11 Q. And outside service?

12 A. Yes.

13 Q. And are you familiar with that  
14 particular service?

15 A. Just to the extent that they're also a  
16 NPDES permittee.

17 Q. I take it that they also do testing  
18 for a variety of companies other than Skokie Valley;  
19 is that correct?

20 A. Apparently so.

21 Q. Are you aware of any attempts by  
22 Skokie Valley to correct any reports that may have  
23 been duplicative?

24 A. No, I'm not.

1 Q. Did you look for that information when  
2 you reviewed this file?

3 A. I did not see any reports that had  
4 been corrected.

5 Q. That wasn't my question, though, sir.  
6 My question was did you look for that information?

7 A. I reviewed the information in our  
8 files. I did not see it.

9 Q. Did you look for information as far as  
10 correcting reports -- reports being corrected or  
11 communication regarding correcting or anything along  
12 those lines?

13 A. No, I didn't.

14 Q. Do you have a chemical background at  
15 all, sir?

16 A. No, I don't.

17 Q. What is your education?

18 A. Well, I have a bachelor of science  
19 degree in environment biology.

20 Q. Okay. When did you receive that?

21 A. In 1976.

22 Q. Did you go on to an advanced degree in  
23 environmental biology?

24 A. No, I didn't.

1           Q.       Have you taken any continuing  
2 education courses with respect to environmental  
3 biology?

4           A.       No, I haven't.

5           Q.       Is there any environmental impact from  
6 the information -- well, strike that.

7                        Would you agree with me, sir, that  
8 you don't know if there was any environmental impact  
9 in the levels reported in the DMRs from Exhibits  
10 9 through 17?

11          A.       I only know it exceeds the permit  
12 limits.

13          Q.       So as you sit here today, you don't  
14 have an opinion that there was actually an  
15 environmental impact based on the data in those  
16 exhibits; is that correct?

17          A.       I don't have any information about  
18 that.

19          Q.       If a company goes out of business, is  
20 it still required to file DMRs under a permit?

21          A.       It's my understanding they are until  
22 the permit gets terminated.

23          Q.       And how can a permit get terminated?

24          A.       A letter is submitted usually to our

1 permit section who processes the termination  
2 request.

3 Q. Or they can allow it to expire as  
4 well, is that correct, the permittee allow the  
5 permit to expire?

6 A. That's my understanding, yes.

7 Q. Are you aware of any cases where  
8 Skokie Valley was found guilty of filing erroneous  
9 DMR reports?

10 A. No.

11 Q. Would you agree with this statement,  
12 sir, that the Illinois EPA would have never brought  
13 charges against Skokie Valley for failure to file  
14 DMR reports if the incident at the Avon drainage  
15 ditch didn't occur?

16 MR. COHEN: Objection. This witness  
17 cannot testify for the Illinois EPA.

18 MR. JAWGIEL: I thought he was a  
19 representative of the Illinois EPA? Maybe  
20 I'm under the wrong --

21 MR. COHEN: Well, under that form of  
22 the question --

23 HEARING OFFICER SUDMAN: You were  
24 asking him if he could what?

1                   MR. JAWGIEL: My question was isn't it  
2 true, sir, in your opinion would charges have  
3 been brought against Skokie Valley for  
4 failing to file DMR reports if the release at  
5 the Avon ditch did not occur.

6                   HEARING OFFICER SUDMAN: I really  
7 don't think he's in a capacity to know that.

8                   MR. JAWGIEL: Well, maybe I'll ask for  
9 an offer of proof.

10                   HEARING OFFICER SUDMAN: Okay. Yes.  
11 Absolutely.

12                   MR. JAWGIEL: May I ask some questions  
13 with respect to an offer of proof?

14                   HEARING OFFICER SUDMAN: Yes.

15 BY MR. JAWGIEL:

16                   Q.       Sir, you've certainly had  
17 communications with the attorneys --

18                   MR. COHEN: Excuse me. If you want to  
19 make an offer of proof, you can make the  
20 offer of proof. It doesn't come by way of  
21 questions to the witness.

22                   MR. JAWGIEL: It certainly does. An  
23 offer of proof allows me to ask questions of  
24 the witness to establish a foundation to

1 bring in evidentiary material, which I will  
2 later attempt to submit, based on the voir  
3 dire of this particular witness outside the  
4 evidence that will be submitted in this case.

5 HEARING OFFICER SUDMAN: Okay. He may  
6 make it as an offer of proof.

7 MR. COHEN: Your Honor, if I may  
8 finish my objection?

9 HEARING OFFICER SUDMAN: Yes.

10 MR. COHEN: The question contradicts  
11 the history of this case. There was a  
12 complaint filed in this case long before the  
13 first amended complaint and the second  
14 amended complaint. The first amended  
15 complaint later adds the water pollution  
16 count. I just want to state that for the  
17 record.

18 HEARING OFFICER SUDMAN: Okay. You  
19 may make your offer of proof.

20 MR. JAWGIEL: Thank you.

21 BY MR. JAWGIEL:

22 Q. Sir, I'm just going to ask you a  
23 series of questions; this may or may not go on the

24 record. You had a series of conversations I take it

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1 with representatives of the State; is that correct?

2 MR. COHEN: Object to the form of the  
3 question, no time frame, no content.

4 MR. JAWGIEL: I'll rephrase it.

5 HEARING OFFICER SUDMAN: Okay. Thank  
6 you.

7 BY MR. JAWGIEL:

8 Q. With respect to this case that we're  
9 here for today, you've had a series of conversations  
10 with representatives of the State, have you not?

11 MR. COHEN: Objection again, no time  
12 frame. We're talking about a time period of  
13 over ten years.

14 HEARING OFFICER SUDMAN: Would you  
15 like to be a little more specific?

16 MR. JAWGIEL: Sure.

17 BY MR. JAWGIEL:

18 Q. When did you have your first  
19 conversation, if any conversations, with the State  
20 regarding the case that we're here for today?

21 A. May I ask for a clarification? What  
22 do you mean by the State?

23 Q. Well, this case is being brought by  
24 the People of the State of Illinois. They have

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1 representatives who are attorneys out of the  
2 Attorney General's Office and various assistants.

3 MR. COHEN: Object to the form of the  
4 question. The witness works for the State of  
5 Illinois.

6 MR. JAWGIEL: Well, now he is their  
7 client.

8 HEARING OFFICER SUDMAN: Right. It  
9 was confusing. He didn't understand who he  
10 meant by the State. I think he was just  
11 explaining.

12 MR. JAWGIEL: Yeah. I'm just trying  
13 to clarify the State of Illinois represented  
14 by the Attorney General's Office and the  
15 various --

16 HEARING OFFICER SUDMAN: So the  
17 Attorney General's Office basically.

18 MR. JAWGIEL: Basically.

19 THE WITNESS: A month or so ago in  
20 preparation for this.

21 BY MR. JAWGIEL:

22 Q. Okay. And in preparation for this  
23 case, you were the person from your understanding  
24 who was going to gather information regarding the

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1 DMRs; is that correct?

2 A. Regarding the DMR submissions,  
3 nonsubmissions.

4 Q. Okay. And was it your understanding  
5 that based on your conversations with various  
6 representatives from the Attorney General's Office  
7 that the whole purpose behind this cause of action  
8 was really the discharge into the Avon drainage  
9 ditch in Libertyville?

10 A. No.

11 Q. Did they discuss that with you at all?

12 A. No, not at that time.

13 Q. Have they ever discussed that with  
14 you?

15 A. I've been made aware of it.

16 Q. Okay. When?

17 A. Well, to review the information in the  
18 files.

19 Q. Okay. But when, a month ago, two  
20 months ago?

21 A. Within the last couple of weeks.

22 MR. JAWGIEL: Okay. He's only talked  
23 about this for the past couple of weeks, your  
24 Honor. I'm not going to go into that line of

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1 questioning.

2 HEARING OFFICER SUDMAN: Okay.

3 MR. JAWGIEL: I can't seem to --  
4 obviously, this case has been around much  
5 longer than a couple of weeks as we all have  
6 well-labored through, so I will withdraw that  
7 series of questions.

8 HEARING OFFICER SUDMAN: So we're  
9 ending the --

10 MR. JAWGIEL: Right. I'll end the  
11 offer as well. Thank you.

12 HEARING OFFICER SUDMAN: Okay.

13 BY MR. COHEN:

14 Q. Based on your conversations with the  
15 State, is it your understanding there was some sort  
16 of discharge into the Avon drainage ditch in  
17 Libertyville?

18 MR. COHEN: Objection, your Honor.

19 He's asking for communications with his

20 attorney. It has no relevance to what this  
21 witness is here to testify about and no  
22 bearing on what he's already testified to.

23 HEARING OFFICER SUDMAN: Didn't you  
24 just ask him that?

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1 MR. JAWGIEL: No. It's a different  
2 question. My question now was based on your  
3 conversations with the State, is it your  
4 understanding that there was a release of  
5 material into the Avon drainage ditch?

6 HEARING OFFICER SUDMAN: Well, I  
7 thought he had already answered that?

8 MR. JAWGIEL: Well, that was in the  
9 offer of proof. I'm now going back into my  
10 case -- or the cross-examination and I am  
11 going to put that portion of it on the  
12 record.

13 HEARING OFFICER SUDMAN: You can  
14 answer it.

15 THE WITNESS: I wasn't specifically  
16 talking to about that.

17 BY MR. JAWGIEL:

18 Q. Do you have any understanding

19 whatsoever that there was a release of some sort of  
20 material into the Avon drainage ditch in  
21 Libertyville?

22 MR. COHEN: Object to the form of the  
23 question, no time frame.

24 MR. JAWGIEL: That lead to this case.

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1 HEARING OFFICER SUDMAN: What was the  
2 question? Could you repeat the question?

3 MR. JAWGIEL: Sure. I'll repeat the  
4 question.

5 BY MR. JAWGIEL:

6 Q. Is it your understanding, sir, that  
7 one of the complaints of the State is that there was  
8 a release into the Avon drainage ditch in  
9 Libertyville? Do you have that understanding as you  
10 sit here today?

11 A. I do now, but I didn't at the time I  
12 was preparing for the DMR submission records.

13 Q. But that's not my question. You do  
14 now? When did you first gain that understanding?

15 A. Probably about a week ago when I was  
16 reviewing files in preparation of this.

17 Q. Fair enough.

18 And based on your review of the  
19 DMRs and knowing that there was a release into the  
20 Avon drainage ditch, would the failure to file the  
21 DMRs by Skokie Valley as alleged by the State have  
22 caused the Avon drainage ditch discharge in your  
23 opinion?

24 MR. COHEN: Objection, calls for

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1 speculation.

2 HEARING OFFICER SUDMAN: Sustained.

3 BY MR. JAWGIEL:

4 Q. Well, in your review of the DMRs --  
5 and I think you consider yourself an expert in  
6 reviewing DMRs; is that correct?

7 A. Yes.

8 Q. Okay. And being an expert in  
9 reviewing DMRs and after reviewing DMRs that were  
10 submitted by Skokie Valley and the ones that weren't  
11 submitted, obviously, you couldn't review those, but  
12 in reviewing the file of Skokie Valley in  
13 preparation for your testimony here today, is there  
14 anything in the DMR reports to you that would link  
15 what was discharged in the Avon drainage ditch to

16 anything in the reports?

17 MR. COHEN: Object to the form of the  
18 question. I certainly don't understand it.

19 HEARING OFFICER SUDMAN: I'm going to  
20 allow it, but you might want to --

21 MR. JAWGIEL: Well, let's see if he  
22 understands it. If he doesn't --

23 HEARING OFFICER SUDMAN: Did you get  
24 that -- in your professional opinion he's

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1 asking you.

2 THE WITNESS: I'm not aware of the  
3 connection.

4 HEARING OFFICER SUDMAN: Okay.

5 BY MR. JAWGIEL:

6 Q. Fair enough.

7 If Skokie Valley no longer holds  
8 an NPDES permit, is there any chance that they will  
9 fail to report a DMR in the future?

10 MR. COHEN: Objection, calls for  
11 speculation.

12 BY MR. JAWGIEL:

13 Q. In your experience.

14 HEARING OFFICER SUDMAN: Could you

15 repeat the question?

16 MR. JAWGIEL: Sure. I'll rephrase it.

17 HEARING OFFICER SUDMAN: Could you?

18 Thank you.

19 BY MR. JAWGIEL:

20 Q. Has it been your experience, sir, in  
21 the past 24 years that if a company no longer holds  
22 an NPDES permit that they are not required to file a  
23 DMR?

24 A. Once the permit expires, they're not

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1 required to.

2 Q. So if Skokie Valley, in your opinion,  
3 no longer has an NPDES permit, they're not required  
4 as we sit here today to file a DMR; is that correct?

5 A. That's correct.

6 Q. And in your experience and expertise,  
7 Skokie Valley would be required to file a DMR until  
8 an NPDES permit is granted to them if ever in the  
9 future?

10 A. That's correct.

11 Q. Does the permit require the permittee  
12 to maintain records for a certain period of time  
13 with respect to the DMRs?

14 A. Yes.

15 Q. How long?

16 A. I need to refer --

17 Q. Take a look. I think it's Exhibit 1.

18 A. Three years from the effective date of

19 the permit they need to maintain their records.

20 Q. Three years from the effective date of

21 the permit; is that correct?

22 A. I can read what it says.

23 Q. Sure. Please.

24 HEARING OFFICER SUDMAN: Would you

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1 state where you're reading from, the

2 paragraph?

3 THE WITNESS: Exhibit 1, page 4,

4 attachment H, item 10B.

5 HEARING OFFICER SUDMAN: Thank you.

6 THE WITNESS: The permittee shall

7 retain all records of monitoring information,

8 including all calibration and maintenance

9 records and all original script chart

10 recording for continuous monitoring

11 instrumentation, copies of all reports

12 required by this permit and records of all

13 data used to complete the application for  
14 this permit for a period of at least three  
15 years from the date of this permit,  
16 management report or application. The period  
17 may be extended by request of the agency at  
18 any time.

19 BY MR. JAWGIEL:

20 Q. Okay. Now with respect to the date of  
21 this permit, is it your understanding the date is  
22 when the permit was issued or the date that the  
23 permit expires based on your expertise?

24 A. It would be from effective date of the

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1 permit.

2 Q. So the date that it was issued; is  
3 that correct?

4 A. Well, no, that's not correct. It  
5 would be from the date of when those records  
6 became --

7 Q. Okay. So in 1987, Skokie Valley would  
8 have been required to hang on to those documents  
9 until 1990 based on your interpretation?

10 A. Yes.

11 Q. In 1997, Skokie Valley would have been

12 required to hang on to those documents until 2000?

13 A. Yes.

14 Q. Beyond that, there's no expectation;  
15 is that correct?

16 A. Unless specifically requested by the  
17 agency.

18 Q. Do you have any information that your  
19 agency requested Skokie Valley to maintain your DMRs  
20 any time longer than the three-year period listed in  
21 a permit?

22 A. I don't.

23 Q. Have you ever after you've taken  
24 employment with your department ever -- did the

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1 person actually stamp the reports?

2 A. No.

3 Q. You were never the person that  
4 actually logged the information either; is that  
5 correct?

6 A. No.

7 MR. JAWGIEL: If I may have one  
8 minute?

9 HEARING OFFICER SUDMAN: (Indicating.)

10 BY MR. JAWGIEL:

11 Q. Sir, if we look at Exhibit 8, do you  
12 see 8A -- well, actually let's go to 8B. Do you see  
13 8B there, sir?

14 A. Yes.

15 Q. Do you see that Skokie Valley is  
16 listed somewhere about the top -- actually top third  
17 or so of the page; is that correct?

18 A. That's correct.

19 Q. You also see, though, at the bottom  
20 half of the page a company by Bimet Corp, dash,  
21 Morris. Do you see that there, sir?

22 A. Yes.

23 Q. And we see that they didn't report any  
24 DMRs until November, is that correct, for this

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1 particular year?

2 A. No. It looks like they submitted in  
3 October.

4 Q. Okay. October. Let's say October.

5 A. October DMR, November.

6 Q. Okay. And was there any action taken  
7 by your department with respect to this company?

8 MR. COHEN: Objection, irrelevant.

9 MR. JAWGIEL: I think it goes clearly

10 to whether or not this is a witch-hunt. I  
11 want to know whether or not these documents  
12 are enforced and what's the purpose behind  
13 these documents.

14 The State is holding this out as  
15 the foundation for bringing allegations  
16 against my client. I want to know whether or  
17 not they brought these allegations against  
18 everybody or are we being picked out.

19 HEARING OFFICER SUDMAN: Well, repeat  
20 your question again.

21 MR. JAWGIEL: Sure.

22 There's a line there for Bimet,  
23 B-I-M-E-T, Corp, dash, Morris and their first  
24 DMR as we've established through the

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1 testimony was filed in October of that year,  
2 and my question was did his department take  
3 any action against that particular company.

4 HEARING OFFICER SUDMAN: And your  
5 objection was --

6 MR. COHEN: It's irrelevant. There's  
7 certainly insufficient foundation to ask this  
8 witness the question.

9 MR. JAWGIEL: He was the head of the  
10 department.

11 HEARING OFFICER SUDMAN: Well, I'll  
12 let you ask that one. Is this a whole line  
13 of questioning on --

14 MR. JAWGIEL: Well, there's a couple  
15 of companies that we see in the same  
16 situation. I can ask him in whole.

17 HEARING OFFICER SUDMAN: You can ask  
18 in general.

19 MR. COHEN: May I make a general  
20 objection?

21 HEARING OFFICER SUDMAN: Yes.

22 MR. COHEN: In the format that he's  
23 asking the question, there's no foundation  
24 laid because there's no evidence in the

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1 record as to when the permit he's asking  
2 about was issued and what the particular  
3 requirement of that permit is to know whether  
4 there is a violation just by looking at the  
5 log.

6 HEARING OFFICER SUDMAN: Actually,  
7 I've decided I'll allow his answer as an

8 offer of proof.

9 MR. JAWGIEL: Well, now, let's take a  
10 step back. If that's the State's position,  
11 let's look at Cartex in Addison. They  
12 reported something, I believe, in May and  
13 then didn't report until again in November.  
14 So I think that clearly shows a nice gap of  
15 time of about five months or so where there  
16 was no reporting. I want to know whether or  
17 not Cartex was -- were any actions taken by  
18 the department against Cartex for these  
19 violations?

20 HEARING OFFICER SUDMAN: Well, I don't  
21 think it's relevant, but I'm going to allow  
22 you to ask generally if he knows about the  
23 legal status of those companies. But I mean,  
24 I don't think it's relevant to this case.

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1 That's why I'm allowing you to ask one  
2 question as an offer of proof, one or two.

3 BY MR. JAWGIEL:

4 Q. Sir, if we look through Exhibit 8 in  
5 its entirety, we see spots here where various other  
6 companies other than Skokie Valley had failed to

7 submit DMR reports for various periods of time.

8                               Some of them had filed DMRs and  
9 failed to do so for a while and then filed another  
10 one. Are you aware of any of these companies being  
11 prosecuted for the failure to file their DMRs other  
12 than Skokie Valley?

13                           MR. COHEN: I have the same objection,  
14 your Honor.

15                           MR. JAWGIEL: Yeah, we'll note the  
16 objection.

17                           HEARING OFFICER SUDMAN: Objection  
18 noted.

19                           THE WITNESS: I'm not aware of it  
20 today.

21 BY MR. JAWGIEL:

22 Q. Okay.

23 A. But there could be an explanation why.

24 Q. I'm not asking you for an explanation,

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1 though, sir. I'm asking you to answer the question.

2                           MR. JAWGIEL: That's all I have for  
3 this witness. Thank you for your time.

4                           HEARING OFFICER SUDMAN: Thank you.

5                           Redirect?

6 MR. COHEN: Your Honor, no redirect.  
7 Mr. Garretson was kind enough to come from  
8 Springfield. I would ask that he be excused.

9 HEARING OFFICER SUDMAN: If there are  
10 no further questions for Mr. Garretson, you  
11 may be excused.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 MR. COHEN: Also, your Honor, I would  
15 ask for a break.

16 HEARING OFFICER SUDMAN: Yes, I agree.  
17 We will take a short recess of about five  
18 minutes, maybe ten.

19 MR. COHEN: Okay.

20 (Whereupon, after a short  
21 break was had, the following  
22 proceedings were held  
23 accordingly.)

24 HEARING OFFICER SUDMAN: We will go

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1 back on the record with the People's next  
2 witness.

3 MR. MURPHY: Your Honor, the State  
4 calls Chris Kallis to the stand.

5 HEARING OFFICER SUDMAN: You may sit  
6 over here, Mr. Kallis. The court reporter  
7 will swear you in.

8 (Witness sworn.)

9 MR. JAWGIEL: Your Honor, can you just  
10 note my objection of having Mr. Kallis  
11 testify regarding the source of the  
12 contamination in the Avon drainage ditch? At  
13 this point in time -- unless you want me to  
14 bring it contemporaneous to --

15 HEARING OFFICER SUDMAN: No. I prefer  
16 you just make a standing objection now.  
17 Thank you.

18 MR. JAWGIEL: Okay. That way we  
19 don't --

20 HEARING OFFICER SUDMAN: Thank you. I  
21 appreciate that.

22 MR. COHEN: If I may just inquire, is  
23 that the same one from the motion in limine?

24 MR. JAWGIEL: Right, the motion in

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1 limine just so I don't have to keep jumping  
2 up and down like a crazy man.

3 HEARING OFFICER SUDMAN: Thank you.

4 MR. MURPHY: Are all of the objections  
5 in the motion in limine?

6 MR. JAWGIEL: Right.

7 MR. MURPHY: Okay.

8 MR. JAWGIEL: Yeah, we'll stand it  
9 through the testimony.

10 HEARING OFFICER SUDMAN: Yes. Thank  
11 you.

12 WHEREUPON:

13 CHRIS KALLIS

14 called as a witness herein, having been first duly  
15 sworn, deposeeth and saith as follows:

16 D I R E C T E X A M I N A T I O N

17 BY MR. MURPHY:

18 Q. Please state your name and spell your  
19 last name for the record?

20 A. Chris Kallis, K-A-L-L-I-S.

21 Q. Who is your employer?

22 A. Illinois Environmental Agency.

23 Q. How long have you been employed with  
24 the Illinois EPA?

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1 A. Approximately 22 years.

2 Q. Which bureau do you currently work for

3 at Illinois of EPA?

4 A. The Bureau of Water.

5 Q. How long has that bureau been known by  
6 that name?

7 A. I believe about -- and I get my times  
8 off -- about 12 years.

9 Q. Was there a different organization  
10 prior to that time?

11 A. What the bureau of water is is a  
12 consolidated bureau of what was once divisions.  
13 There was the division of water pollution control  
14 and the division of public water supply. What the  
15 bureau of water did is it consolidated them under  
16 one bureau. I work for the division of water  
17 pollution control.

18 Q. Thank you.

19 What is your job title at Illinois  
20 EPA?

21 A. Environmental protection specialist.

22 Q. How long have you been an environment  
23 protection specialist?

24 A. About 20 years.

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1 Q. Okay. Can you briefly describe for

2 the Board your duties as an environmental protection  
3 specialist for the Illinois EPA?

4 A. My duties are to conduct inspections  
5 and investigations to ensure compliance with the  
6 Illinois Environmental Protection Act and Title 35  
7 concerning water pollution.

8 Q. Okay. In your experience in doing  
9 that, have you had -- or during your time doing  
10 that, have you had some experience with what's known  
11 as the NPDES program?

12 A. Yes.

13 Q. What does that acronym stand for?

14 A. National Pollutant Discharge  
15 Elimination System.

16 Q. And how does that program function?

17 A. It functions by issuing NPDES permits  
18 to any entity, industry, municipality or otherwise  
19 that has the potential of discharging contaminants  
20 to waters of the State.

21 Q. Does it involve water quality  
22 standards?

23 MR. JAWGIEL: I'll object to the  
24 leading nature.

1 HEARING OFFICER SUDMAN: I think he's  
2 just laying some background. I'll allow it.

3 THE WITNESS: It was put into place to  
4 ensure water quality standards.

5 BY MR. MURPHY:

6 Q. Can you describe what types of water  
7 quality standards there are?

8 A. Under the statute there are water  
9 quality standards that are based on numerical  
10 concentrations of contaminants and there's also  
11 standards involving visual observations such as  
12 oils, grease, turbidity, odor.

13 Q. Okay. Thank you.

14 Can you briefly describe your  
15 education?

16 A. I have a bachelor's degree from  
17 Northeastern University.

18 Q. What is the bachelor's degree in?

19 A. Geography and environmental science --  
20 or the study.

21 Q. Is that a bachelor of science?

22 A. No.

23 Q. A bachelor of arts?

24 A. Yeah.

1 Q. When did you receive that degree?

2 A. I received it in late 1977.

3 Q. Have you received any training from  
4 Illinois EPA or any other agency during your time  
5 with Illinois EPA?

6 A. I have received training from Illinois  
7 EPA and from USEPA.

8 Q. And that is concerning -- was that  
9 training concerning water pollution laws and  
10 regulations?

11 MR. JAWGIEL: Again, I'm going to  
12 object to the leading nature.

13 HEARING OFFICER SUDMAN: This is just  
14 background information. I'll allow it just  
15 so we can get through it more quickly.

16 THE WITNESS: Thank you.

17 The training that was done by  
18 Illinois EPA primarily concerned waste water  
19 treatment plants. It was a correspondence  
20 course that was given at the time I started  
21 the agency to all inspectors that were  
22 starting with the agency to increase their  
23 ability of inspecting waste water treatment  
24 facilities.

1                               Concerning the NPDES permits, I  
2                               have received some training from USEPA or at  
3                               least sponsored by USEPA concerning storm  
4                               water, the NPDES storm program.

5 BY MR. MURPHY:

6                               Q.       Okay. Switching now to the matter  
7                               that brings us all here today, are you familiar with  
8                               the site formerly known as Skokie Valley Asphalt in  
9                               Grayslake that is the subject of this proceeding?

10                              A.       Yes.

11                              Q.       Okay. How are you familiar with that  
12                              site?

13                              A.       Through the years I've inspected them  
14                              many times.

15                              Q.       Can you give us some kind of time  
16                              frame when you first started going there and how  
17                              long those inspections lasted over time?

18                              A.       I believe I first started inspecting  
19                              Skokie Valley Asphalt in the early '80s.

20                              Q.       Why were you going to Skokie Valley  
21                              Asphalt?

22                              A.       Initially it was to confirm what was  
23                              there. We had a system, a list of many facilities,  
24                              some that had NPDES permits and some that had

1 pending NPDES permits, and my job was to go to these  
2 facilities and do a permit verification and also to  
3 determine compliance.

4 Q. Okay. Were there any other reasons  
5 later on why you would go to Skokie Valley Asphalt?

6 MR. JAWGIEL: Again, I'm going to  
7 object to the time frame with respect to  
8 when.

9 HEARING OFFICER SUDMAN: Would you  
10 like to --

11 MR. MURPHY: Well, he's already said  
12 during the 1980s.

13 HEARING OFFICER SUDMAN: Oh, during  
14 the 1980s?

15 MR. JAWGIEL: Okay. If it's limited  
16 to 1980, that's fine.

17 HEARING OFFICER SUDMAN: Okay.

18 THE WITNESS: In the 1980s, yes, I did  
19 inspect Skokie Valley Asphalt as a follow-up  
20 to citizen complaints.

21 BY MR. MURPHY:

22 Q. What were the citizen complaints about  
23 generally?

24 MR. JAWGIEL: Your Honor, I'm going to

1 object as to hearsay.

2 HEARING OFFICER SUDMAN: Well --

3 MR. JAWGIEL: It's pure hearsay.

4 MR. MURPHY: It's not offered for the  
5 truth of the matter as certain, your Honor.  
6 It's an offer to see why he's going to the  
7 site.

8 MR. JAWGIEL: Well, along with it, it  
9 has no relevance. The time frame of the  
10 complaint starts in 1988. We don't have --  
11 we have no relevance or any sort of causal  
12 connection between what they're eliciting  
13 from him or not.

14 He's already said he's been there  
15 since the 1980s until -- they haven't  
16 established when, but the bottom line is  
17 we're there. The foundation has been laid.  
18 Let's move on.

19 HEARING OFFICER SUDMAN: Your  
20 objection is noted, but I'm going to allow it  
21 because it does explain why he was there.

22 MR. JAWGIEL: But, your Honor, if I  
23 may just for the record, it has no relevance  
24 of why he was there because that's not part

1 of the complaint.

2 MR. MURPHY: It is part of the  
3 complaint. It runs towards violations also  
4 relevant for Sections 33C and 42H.

5 HEARING OFFICER SUDMAN: I agree. I'm  
6 going to allow it.

7 THE WITNESS: Yes. In around 1987, I  
8 did inspect Skokie Valley Asphalt as a result  
9 of complaints of water quality violations in  
10 the Avon drainage ditch.

11 BY MR. MURPHY:

12 Q. Okay. Now, you mentioned that the  
13 inspections you performed happened in the 1980s.  
14 Did you also go there after that?

15 A. Yes.

16 Q. Okay. So into the 1990s?

17 A. Yes.

18 Q. What type of business is located at  
19 the Skokie Valley Asphalt site?

20 A. As long as I've been inspecting Skokie  
21 Valley Asphalt, they've used that site for storage  
22 of liquid asphalt and also as a transportation  
23 facility, a dispatch transportation facility.  
24 That's where they seemed to have kept all their

1 trucks and so on.

2 Q. Were there any notable activities at  
3 the site that were of interest to you as an  
4 inspector?

5 MR. JAWGIEL: I'm going to object as  
6 to the time frame.

7 MR. MURPHY: In the 1980s.

8 HEARING OFFICER SUDMAN: Thank you.

9 MR. JAWGIEL: I'm going to object to  
10 relevance.

11 HEARING OFFICER SUDMAN: Overruled.

12 THE WITNESS: Yes. They had a  
13 treatment system for storm water runoff that  
14 consisted of an oil separator in the two-cell  
15 lagoon system on their site.

16 BY MR. MURPHY:

17 Q. Who were the owners of Skokie Valley  
18 Asphalt, if you know?

19 A. At the time, the owners were --

20 MR. JAWGIEL: I'm going to object as  
21 to speculation, your Honor. This is a  
22 corporation. There are owners, the  
23 shareholders.

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1 knows. He was a site inspector. I mean, I'm  
2 going to allow him to answer it.

3 THE WITNESS: To the best of my  
4 knowledge, the owners were the Frederick  
5 brothers.

6 BY MR. MURPHY:

7 Q. Do you know their first names?

8 A. Yes. Richard and Larry -- or Edwin.  
9 I know that it's both Edwin and Larry.

10 Q. Did you ever know Skokie Valley  
11 Asphalt to have operated under a different name?

12 A. Yes.

13 Q. What was that different name?

14 A. Liberty Asphalt.

15 MR. JAWGIEL: I'm going to object as  
16 to speculation with respect to the  
17 relationship and the corporate structure  
18 between Libertyville Asphalt and Skokie  
19 Valley unless there's something else to  
20 establish that.

21 There are two separate entities  
22 and that hasn't been established here, so he

23           hasn't laid proper foundation for that  
24           question.

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1                   HEARING OFFICER SUDMAN:  Would you  
2           like to respond to that, Mr. Murphy?

3                   MR. MURPHY:  Sure.  I asked him if he  
4           knew if the business, Skokie Valley Asphalt,  
5           ever operated under a different name and he  
6           said he knew and he gave me an answer.

7                   MR. JAWGIEL:  But he hasn't  
8           established the foundation of how me gained  
9           that knowledge.  There has to be a foundation  
10          how he gained the knowledge that Skokie  
11          Valley operated under a different name under  
12          that corporate structure.

13                   HEARING OFFICER SUDMAN:  I don't think  
14          we need that at this point.  He just asked  
15          him if he knew if it operated under a  
16          different name.  I'll allow it to stand as it  
17          is.

18                   MR. MURPHY:  Thank you.

19  BY MR. MURPHY:

20                   Q.       Are you familiar with the area  
21          surrounding the former Skokie Valley Asphalt site?

22 A. Yes.

23 Q. Okay. And how are you familiar with  
24 the area surrounding the former Skokie Valley

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1 Asphalt site?

2 A. Just from inspecting Skokie Valley  
3 Asphalt and being the primary inspector for  
4 Lake County for dozens of years.

5 Q. So these inspections occurred during  
6 the same time frame that you inspected the actual  
7 Skokie Valley Asphalt site?

8 A. Yes.

9 Q. And that was through the '80s and  
10 '90s, I believe?

11 A. Yes.

12 Q. Thank you.

13 What did your inspections mainly  
14 deal with at the Skokie Valley Asphalt site and the  
15 surrounding area?

16 A. They mainly dealt with their two-cell  
17 lagoon system, which was the primary source of any  
18 discharge from them during those times.

19 Q. And as a regulatory matter, why was

20 that significant?

21 A. Well, according to their NPDES permit  
22 application, it was the main source of their  
23 discharge.

24 Q. Were you investigating violations of

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1 their NPDES permit?

2 A. In 1987, the first time.

3 Q. Were you ever investigating anything  
4 else?

5 A. Before that, it was primarily permit  
6 verification.

7 Q. What about water quality violations?

8 MR. JAWGIEL: Your Honor, if I may,  
9 he has a notepad that he's referring to on  
10 the desk and I ask that that be removed.

11 HEARING OFFICER SUDMAN: Okay. Thank  
12 you. I also ask that that be produced to us  
13 so we can review it.

14 THE WITNESS: It's a personal notepad,  
15 your Honor.

16 HEARING OFFICER SUDMAN: Pardon me?

17 THE WITNESS: It's a personal notepad,  
18 your Honor.

19 MR. MURPHY: They can see it. I've  
20 got no problem with them seeing it.

21 HEARING OFFICER SUDMAN: Okay. Show  
22 him the page you were looking at.

23 MR. MURPHY: I'm just asking if --

24 THE WITNESS: Sir, sir -- I would like

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1 my personal notepad back, your Honor. Those  
2 are personal notes.

3 HEARING OFFICER SUDMAN: Were you  
4 reviewing that during your testimony that you  
5 had given?

6 THE WITNESS: I just referred as a  
7 date. I did write dates down.

8 MR. JAWGIEL: He's referring to it, so  
9 we're going to take a look at it.

10 THE WITNESS: Your Honor, this is a  
11 personal notepad; there are personal notes.

12 HEARING OFFICER SUDMAN: I understand  
13 that but when you bring it here --

14 THE WITNESS: Okay. I got you.

15 MR. MURPHY: Can I ask if he's going  
16 to need to refer to that during his --

17 HEARING OFFICER SUDMAN: Yes, please.

18 BY MR. MURPHY:

19 Q. Are you going to need to refer to that  
20 notebook during the rest of your testimony?

21 MR. JAWGIEL: I'll object. It hasn't  
22 been produced until now. This is a complete  
23 surprise. A witness is not allowed to write  
24 notes and bring them on the stand to help him

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1 testify. He's here to present documentation  
2 that will refresh his recollection and lay  
3 the proper foundation if he does not have  
4 personal knowledge. But a witness can't  
5 write out their testimony and take it to the  
6 stand and read it into the record.

7 MR. MURPHY: I don't think that's what  
8 he was doing. He looked for verification of  
9 a couple of dates.

10 MR. JAWGIEL: Regardless of what he  
11 was doing with it. This is completely  
12 improper procedure to even allow the witness  
13 to bring a notepad up to the stand during  
14 testimony.

15 MR. MURPHY: No, it's not. It's  
16 perfectly acceptable.

17 THE WITNESS: Your Honor, I don't need  
18 it.

19 HEARING OFFICER SUDMAN: Okay. He's  
20 not going to use it.

21 MR. MURPHY: Can we have it back then?

22 MR. JAWGIEL: I'm going to review it.  
23 I still get a chance to review it. It's a  
24 document that he was using during the course

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1 of his testimony here today.

2 HEARING OFFICER SUDMAN: Okay. Take a  
3 minute, but look at it quickly. We'll wait  
4 for you.

5 (Mr. Jawgiel perusing  
6 the notepad.)

7 You've got about another 30 seconds.  
8 And I'll note for the record that I actually  
9 did not see you looking at any notes.

10 MR. JAWGIEL: And I also ask that you  
11 note for the record that the notepad was next  
12 to him before he handed it over to me and  
13 that he also admitted on the stand that he  
14 was reviewing it in his testimony.

15 HEARING OFFICER SUDMAN: So noted.

16 Please continue.

17 BY MR. MURPHY:

18 Q. There's a question that's pending and  
19 I believe it had to do with your inspections of the  
20 Skokie Valley Asphalt site and the surrounding  
21 having to do with water quality violations.

22 A. Yes.

23 Q. So that was another reason why you  
24 went there?

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1 A. Yes.

2 Q. Okay. Did Skokie Valley Asphalt have  
3 an NPDES permit to your knowledge?

4 A. Yes.

5 Q. Why was Skokie Valley Asphalt required  
6 to have an NPDES permit?

7 A. Because it was determined by field  
8 operations section that they had storm water runoff  
9 associated with industrial activity that could be a  
10 threat to water quality.

11 Q. Now, can you explain what field  
12 operations section is?

13 A. It's a section of division of water  
14 pollution control that does the field inspections.

15 Q. For Illinois EPA?

16 A. For Illinois EPA, for the division of  
17 water pollution control.

18 Q. Mr. Kallis, you have a binder in front  
19 of you.

20 A. Yes.

21 Q. I'm going to refer you to Exhibit  
22 No. 19. Please take a moment to look at that.

23 (Witness perusing  
24 the document.)

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1 A. Okay.

2 Q. Do you recognize it?

3 A. Yes.

4 Q. What is it?

5 A. It's a memo dated August 9, 1991 to  
6 Margaret Howard from myself concerning Skokie Valley  
7 Asphalt.

8 Q. Okay. And are there attachments to  
9 that August 9, 1991 memo?

10 A. Yes. There's a memo dated June 4,  
11 1991 to Bill Bush from myself concerning Skokie  
12 Valley Asphalt.

13 Q. As long as you listed them, are there

14 others?

15           A.       There's a division of land pollution  
16 complaint investigation form and there's a letter  
17 from Tod Marvel, division of land pollution, FOS, to  
18 Gary King, EDG, dated  
19 July 18, 1988.

20           Q.       What about after the GOPC component?

21           A.       Right. After that, there is a  
22 compliance inquiry letter dated October 31 --  
23 ironically -- 1988 to Skokie Valley Asphalt from  
24 Roger Callaway, the compliance monitoring unit.

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1 There is a correspondence dated November 9, 1988  
2 signed by Richard Frederick to compliance assurance  
3 section.

4                       There is a certified mail dated  
5 January 5, 1990, which was also a compliance inquiry  
6 letter also signed by Roger Callaway, and there is a  
7 correspondence dated January 17, 1990 from Skokie  
8 Valley Asphalt signed by a Robert Christiansen,  
9 operations manager.

10                      There's a September 13, 1990  
11 correspondence from Marlene McHenry, office  
12 administrator of permit section, division of water

13 pollution control to Skokie Valley Asphalt.

14                               There's an April 11, 1991 letter,  
15 compliance inquiry letter on failure to file permit  
16 renewal application signed by Roger Callaway. There  
17 is a response letter from Skokie Valley Asphalt  
18 dated April 22, 1991, signed by Edwin Frederick.

19                               There's a May 7, 1991  
20 correspondence to Jan Hopper from Edwin Frederick.  
21 There's a sample result that I took dated March 21,  
22 1991.

23               Q.       Did you attach those attachments to  
24 the August 9, 1991 memo?

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1               A.       Yes, I did.

2               Q.       When you prepared the August 9, 1991  
3 memo?

4               A.       Yes.

5               Q.       Is the August 9, 1991 memo used in the  
6 ordinary course of Illinois EPA business?

7               A.       Yes.

8               Q.       Together with its attachments?

9               A.       Yes.

10              Q.       Is the August 9, 1991 memo together  
11 with the attachments kept in the ordinary course of

12 Illinois EPA business?

13 A. Yes.

14 Q. Is that a true and accurate copy of  
15 the memo and the attachments?

16 A. Yes, it is.

17 Q. Mr. Kallis, can you tell the Board  
18 what was listed in the NPDES permit application as  
19 sources of -- potential sources of pollution?

20 A. The application listed gravel, sand,  
21 stone, recycled bituminous, concrete, pavement,  
22 asphalt, cemented tanks, gasoline, fuel, oil, and  
23 tanks.

24 Q. Did it mention anything else?

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1 A. I wrote: It is believed based on past  
2 reports that the bituminous concrete, which is  
3 stored in a huge pile, is a major source of  
4 contamination.

5 Q. In the NPDES permit application -- or  
6 does the NPDES permit application indicate how storm  
7 water is collected and treated at the Skokie Valley  
8 Asphalt site?

9 A. Yes.

10 Q. Can you explain how that --

11           A.       Yes.  Treatment consists of storm  
12 water routed via gravity to an oil/water separator,  
13 which is a triple basin separator, according to  
14 their permit application anyway in a storm water  
15 retention pond -- it was a two-cell pond -- in its  
16 two-cell pond.

17           Q.       Can you describe how the oil separator  
18 works?

19           A.       Well, a separator works as a skimming  
20 device using a series of layers (indicating).

21           Q.       And what's the purpose of the  
22 oil/water separator?

23           A.       To remove oil.

24           Q.       Where did the storm water go after the

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1 storm sewer -- strike that.

2                       Where did the storm water go after  
3 running through the oil/water separator and the  
4 storm water retention ponds?

5           A.       Well, the NPDES permit was for a  
6 tributary to Grayslake.

7           Q.       So is that where the storm water would  
8 go after running through there?

9           MR. JAWGIEL:  Your Honor, I'm going

10 to objection. He hasn't laid a foundation  
11 where that particular drain ditch goes with  
12 this particular witness.

13 HEARING OFFICER SUDMAN: Well, I think  
14 that's what he's doing now.

15 Continue.

16 MR. MURPHY: Thank you.

17 THE WITNESS: Can you repeat the  
18 question?

19 BY MR. MURPHY:

20 Q. Where was the storm water to go after  
21 being routed through the oil/water separator and the  
22 storm water retention ponds?

23 A. It was to go to Grayslake. That's  
24 where it was to go according to the NPDES permit.

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1 Q. Is Grayslake a water of the State?

2 A. Yes.

3 Q. What kind of NPDES permit did Illinois  
4 EPA issue to Skokie Valley Asphalt?

5 A. A site-specific NPDES permit for their  
6 storm water runoff of this facility.

7 Q. What is the intent behind or purpose  
8 behind an NPDES site-specific permit?

9           A.       The purpose behind an NPDES  
10 site-specific permit is to ensure that water quality  
11 standards are met by ensuring that the industry --  
12 that's the permittee so to speak -- monitors on a  
13 regular basis.

14           Q.       During your inspection, did you ever  
15 observe that Skokie Valley Asphalt was not in  
16 compliance with its April 4, 1986 NPDES permit?

17           A.       Yes.

18           Q.       More than once?

19           A.       Yes.

20           Q.       Do you note in your August 9, 1991  
21 memo why Skokie Valley Asphalt was out of compliance  
22 with its 1986 NPDES permit? And I direct your  
23 attention to bullet point number 2.

24           A.       There was no representative sampling

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1 point. You're talking on item number 2 on the  
2 August 9 memo, right?

3           Q.       Yes, sir.

4           A.       Right.

5           Q.       And what is a representative sampling  
6 point?

7           A.       It is a point that's needed for the

8 permittee to grab their samples and for the agency  
9 to grab samples too for confirmation to ensure that  
10 they're meeting the permit limits that were  
11 described in the NPDES permit.

12 Q. And the 1986 NPDES permit required  
13 them to have such a sampling point?

14 A. It required them to take  
15 representative samples.

16 Q. And to do that --

17 A. You need a representative sampling  
18 point.

19 Q. Okay. I'm going to direct your  
20 attention now to the June 4, 1991 memo that's an  
21 attachment to the August 9, 1991 memo. Can you tell  
22 me what that memo is about?

23 A. It was a compliance update to our  
24 field operations manager at the time.

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1 Q. And specifically was it referenced in  
2 the May 21, 1991 inspection visit?

3 A. Yes.

4 Q. Can you describe what happened during  
5 that inspection visit?

6 MR. JAWGIEL: Your Honor, this has

7 little or no relevance.

8 HEARING OFFICER SUDMAN: In what way?

9 I think it's pretty relevant.

10 MR. JAWGIEL: All right. I'll

11 withdraw the objection.

12 HEARING OFFICER SUDMAN: Okay.

13 MR. JAWGIEL: Let's see where it goes.

14 HEARING OFFICER SUDMAN: All right.

15 Thank you.

16 THE WITNESS: The purpose of the  
17 inspection was twofold. It was to meet --  
18 some folks from the division of land  
19 pollution control were there to do a site  
20 assessment just as a general knowledge  
21 consulting thing for them.

22 I was also there to establish  
23 whether indeed Skokie Valley Asphalt had  
24 installed a representative monitoring point

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1 to ensure NPDES monitoring.

2 BY MR. MURPHY:

3 Q. Did you meet anybody from Skokie  
4 Valley Asphalt during that inspection?

5 A. Yes, I met Richard Frederick and

6 Edwin Frederick.

7 Q. Did you have a conversation with  
8 Richard Frederick and Larry Frederick about that?

9 A. Yes, I did.

10 Q. About why you were there?

11 A. Yes, I did.

12 Q. What happened in that conversation?

13 MR. JAWGIEL: I'm just going to object  
14 with regard to what happened in that  
15 conversation. If he wants to ask him what  
16 was said in that conversation, that's fine,  
17 but I think the form of the question is  
18 inappropriate.

19 HEARING OFFICER SUDMAN: Well, I think  
20 it's -- I mean, I can understand what the  
21 meaning is. If you want to rephrase it, you  
22 can, otherwise, I think it's pretty clear.

23 MR. MURPHY: Sure. I'll be happy to.

24

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1 BY MR. MURPHY:

2 Q. Who said what to whom in that  
3 conversation?

4 A. Well, I stated I was there mainly to

5 establish whether they put in a sampling point in a  
6 manhole that connected their lagoon system to a  
7 tributary to Grayslake and there was some resistance  
8 and --

9 MR. JAWGIEL: I'm going to object.  
10 This witness is reading from the document.

11 HEARING OFFICER SUDMAN: Well, no,  
12 here, that's fine.

13 MR. JAWGIEL: If he needs to refresh  
14 his recollection -- this reading from the  
15 document serves no purpose.

16 THE WITNESS: Madam Hearing Officer, I  
17 wasn't reading from a document at that time.

18 HEARING OFFICER SUDMAN: Overruled.  
19 Go ahead.

20 THE WITNESS: What had happened was  
21 some tempers flared and there was some  
22 hostility and I got the impression they  
23 wanted me to go, so I left just to avoid  
24 confrontation.

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1 BY MR. MURPHY:

2 Q. Hostility on whose part?

3 A. On Richard and Edwin Frederick.

4 Q. So did the Frederick brothers show you  
5 an effluent sampling point when you showed up on  
6 that date?

7 A. Not on that day.

8 Q. So you were not able to see a sampling  
9 point on that day?

10 A. Not on that day.

11 Q. Directing your attention to Exhibit 20  
12 in the binder, will you take a moment to look  
13 through that, please.

14 (Witness perusing  
15 the document.)

16 A. Okay.

17 Q. Do you recognize that document?

18 A. Yes, I do.

19 Q. What is it?

20 A. It is a memo from myself,  
21 Chris Kallis, to Rick Pinio dated October 9, 1991  
22 concerning my comments on NPDES permit application.

23 Q. Who is Rick Pinio?

24 A. Rick Pinio is an employee of division

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1 of water pollution control industrial permit  
2 section. His job is to write permits.

3 Q. So he's an Illinois EPA employee?  
4 A. Yes, he is.  
5 Q. Is this document used in the ordinary  
6 course of normal EPA business?  
7 A. Yes.  
8 Q. Is this document kept in the ordinary  
9 course of normal EPA business?  
10 A. Yes.  
11 Q. Is this a true and accurate copy of  
12 that memo?  
13 A. Yes.  
14 MR. MURPHY: Madam Hearing Officer,  
15 may I have a second?  
16 HEARING OFFICER SUDMAN: Yes.  
17 BY MR. MURPHY:  
18 Q. Which permit did that memo refer to?  
19 A. It referred to the NPDES application  
20 for renewal of permit from Skokie Valley Asphalt.  
21 Q. What was the date of that permit  
22 application, if you remember?  
23 A. That, I don't. I'm sorry.  
24 Q. Okay. Would it have been sometime

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1 around the date of that memo?

2 MR. JAWGIEL: Your Honor, I'm going to  
3 object. That asks for speculation. If he  
4 doesn't know the date, he won't know when it  
5 was.

6 HEARING OFFICER SUDMAN: You're asking  
7 him what the date was?

8 MR. MURPHY: If he knows -- he may not  
9 know the specific date but he may know that  
10 it was sometime around the memo or why else  
11 would he be doing the memo at that time?

12 MR. JAWGIEL: That's pure speculation.

13 MR. MURPHY: No. That's why I asked  
14 the question.

15 HEARING OFFICER SUDMAN: Well,  
16 overruled. I'll allow it.

17 THE WITNESS: I believe it was shortly  
18 before this memo.

19 BY MR. MURPHY:

20 Q. Mr. Kallis, while Skokie Valley  
21 Asphalt operated under the 1986 permit, did Skokie  
22 Valley Asphalt have a representative sampling point  
23 that was accessible?

24 A. Can you repeat that question? I'm

1 sorry.

2 Q. Certainly.

3 While Skokie Valley Asphalt  
4 operated under the 1986 NPDES permit, did Skokie  
5 Valley Asphalt have a representative sampling point  
6 that was accessible?

7 A. No.

8 Q. Was Skokie Valley Asphalt ever  
9 permitted to discharge to Avon drainage ditch?

10 A. No.

11 Q. Did Skokie Valley Asphalt at all times  
12 comply with the 1986 NPDES permit in its discharge  
13 to Grayslake?

14 A. You're asking me if they complied with  
15 their discharge to Grayslake?

16 Q. Correct.

17 A. No.

18 Q. Does Avon drainage ditch discharge to  
19 Grayslake?

20 A. No.

21 Q. Where does it discharge?

22 A. Third Lake.

23 Q. Turning your attention to Exhibit  
24 No. 32, does that map indicate where Skokie

1 Valley -- strike that.

2 Does that map indicate where Avon  
3 Fremont drainage ditch is?

4 A. Yes. It's that blue line that's just  
5 to the right of the site of Skokie Valley Asphalt.

6 Q. Where does that blue line run?

7 A. It flows north.

8 Q. It flows north through the Village of  
9 Grayslake?

10 A. Yes.

11 Q. Mr. Kallis, I want to direct your  
12 attention now to Exhibit No. 18 in the binder. Take  
13 a moment to look at that, please.

14 (Witness perusing  
15 the document.)

16 A. Yes. It's a complaint investigation  
17 dated March 5, 1987.

18 MR. JAWGIEL: Your Honor, I'm going to  
19 object to the relevance of this. The  
20 complaint doesn't start with any allegations  
21 against us in 1988.

22 HEARING OFFICER SUDMAN: Pardon me. I  
23 didn't hear you.

24 MR. JAWGIEL: The complaint doesn't

1 start with any allegations against Skokie  
2 Valley until 1988. This is a 1987 complaint.  
3 The relevance of this is nonexistent.

4 HEARING OFFICER SUDMAN: Mr. Murphy?

5 MR. MURPHY: It is certainly relevant,  
6 Madam Hearing Officer, when you consider  
7 Section 33 of the Act and I'll read right  
8 from the Act. The character and degree of  
9 injury to -- Section 33(c)(i): The character  
10 and degree of injury to or interference with  
11 the protection of the health and general  
12 welfare and physical property of the people;  
13 (5): Any subsequent compliance.

14 These are things that the Board  
15 may consider in its orders and determination.

16 HEARING OFFICER SUDMAN: Okay. I'm  
17 going to overrule it.

18 MR. JAWGIEL: Your Honor, they have  
19 not read anything out of the Act that has any  
20 bearing on the memo that predates the  
21 complaint. There's no relevance whatsoever  
22 and they haven't sited any sort of language  
23 in the Act that allows for it.

24 It has no relevance whatsoever and

1           what they're trying to do is merely muddle  
2           the issues. The issues in the complaint have  
3           been laid out. They're presenting a memo  
4           that predates it that has nothing to do with  
5           the allegations in the complaint and now  
6           they're trying to basically muddy the waters.

7                       MR. MURPHY: I can show this memo is  
8           relevant, one, because it relates to the  
9           issue of corporate officer liability and it  
10          also relates to the issue of why he was going  
11          out to the site in the first place and why  
12          they were required to get an NPDES permit.

13                      HEARING OFFICER SUDMAN: Okay. I'm  
14          going to allow it.

15          BY MR. MURPHY:

16                Q.       Did you prepare that report?

17                A.       Yes.

18                Q.       When did you prepare it?

19                A.       I prepared it sometime after

20          March 5, but before March 10.

21                Q.       Okay. So shortly after you made the  
22          inspection?

23                A.       Right.

24                Q.       Is that document used in the ordinary

1 course of Illinois EPA business?

2 A. It was at the time. We don't  
3 handwrite inspection reports now.

4 Q. Is that document kept in the ordinary  
5 course of Illinois EPA business?

6 A. Yes.

7 Q. Is that a true and accurate copy of  
8 that report?

9 A. Yes.

10 Q. Mr. Kallis, what did you observe  
11 during your March 3, '87 inspection?

12 A. We had a complaint of oil and grease,  
13 just an oily residue in Avon drainage ditch and we  
14 traced it to a pump-out -- when I say we, I mean me  
15 representing the agency -- from their two-cell  
16 lagoon.

17 Q. What kind of pump-out, can you  
18 describe that, please?

19 A. It was done with a portable pump with  
20 an elongated hose.

21 Q. Where was the hose hooked up to and  
22 where did it discharge to?

23 A. It was hooked up to their second cell  
24 and it lead to the southeast part of their property.

1 Q. What are you referring to when you say  
2 cell?

3 A. I'm referring to a manhole that is  
4 located kind of southeast of their property. It's  
5 on the drawing on the second page.

6 Q. Okay. And that was the discharge  
7 point?

8 A. Yes.

9 Q. My question is where was the line  
10 drawing its discharge from?

11 A. The two-cell lagoon.

12 Q. The second cell, two-cell lagoon?

13 A. Right, which are pictured on photo  
14 three.

15 Q. Attached to that report?

16 A. Yes.

17 Q. Previously you referred to storm water  
18 retention ponds. Are these cells the same thing as  
19 the storm water retention ponds?

20 A. That is correct.

21 Q. Who is this "they" that you're saying  
22 was discharging this material, this liquid from the  
23 storm water pond to the manhole?

24 A. Skokie Valley Asphalt.

1 Q. Did they have a permit to do that?

2 A. No.

3 Q. Was that covered by their 1986 NPDES  
4 permit?

5 A. No.

6 Q. Where did the manhole discharge to?

7 A. The manhole discharged -- lead to a  
8 tile and discharged out of the tile to Avon drainage  
9 ditch.

10 Q. Did the 1987 NPDES permit cover  
11 discharges or allow discharges to the Avon drainage  
12 ditch?

13 A. No, it didn't.

14 Q. Mr. Kallis, I'm going to direct your  
15 attention to Exhibit No. 21 in the binder. Can you  
16 please take a moment to look through that?

17 (Witness perusing  
18 the document.)

19 A. Well, there's a lab sheet for my  
20 request for a sampling of oil and grease and the  
21 results attached, and there's also results for  
22 organics and pesticide sample that was collected.

23 Q. Okay. Let's break this down a little  
24 bit. You say samples were collected. What samples

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1 are you referring to?

2 A. Samples for oil and grease and samples  
3 for organics and pesticide.

4 Q. Collected where?

5 A. At a discharge tile to Avon drainage  
6 ditch.

7 Q. Okay. We'll come back to that in a  
8 moment. But did you collect those samples?

9 A. Yes.

10 Q. When did you collect them?

11 A. I collected them on the morning of  
12 March 1, 1995.

13 Q. Why did you collect those samples?

14 A. In response to an ongoing  
15 investigation as to the source of contaminants,  
16 obvious contaminants, that were discharged into the  
17 Avon drainage ditch.

18 MR. JAWGIEL: Your Honor, I'm going  
19 to object to the relevance of this whole line  
20 of questioning. There's no relevance  
21 whatsoever at this point in time. There's no

22 enforcement action that has been established  
23 regarding both this inspection report and the  
24 prior ones from 1987. It has no relevance in

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1 this case.

2 HEARING OFFICER SUDMAN: Your  
3 objection is noted, but I'm going to allow  
4 it. I think it's relevant.

5 BY MR. MURPHY:

6 Q. What did you do when you first went  
7 out to the Avon drainage ditch that day?

8 A. I believe I parked my car over by the  
9 railroad station. I had a hand-held cooler which  
10 was able to hold a bottle for organics and a bottle  
11 for oils and grease and I walked along the ditch up  
12 to the tile, took out the bottles, took the sample.  
13 I did use latex gloves just as protection.

14 I marked the bottles -- actually,  
15 I marked them before I even took the sample with the  
16 marker, put them back in the cooler, transported  
17 them back to the office.

18 Q. Where exactly did you collect the  
19 samples?

20 A. From a farm tile discharge at the Avon

21 drainage ditch.

22 Q. Okay. Now, where is that -- switching  
23 gears now for a moment to Exhibit No. 32, which is  
24 the map you looked at previously. Can you describe

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1 for the Board where that farm tile is as it connects  
2 to Avon drainage ditch on this map?

3 A. It's approximately maybe a little  
4 north of where the two Ps, an approximate.

5 Q. Okay. So the map has a designation of  
6 the approximate location of the subject property?

7 A. Right.

8 Q. And you're saying that the farm tile  
9 was located just north of where those two Ps appear  
10 on that map?

11 A. To the best of my recollection, yes.

12 Q. What did you observe when you  
13 collected the sample?

14 A. I observed a heavy oil sheen and a  
15 heavy oily substance discharging from the farm tile  
16 and it was causing an oil sheen, very concentrated.

17 Q. What did the water upstream from the  
18 farm tile in the Avon drainage ditch look like?

19 A. It was either partially frozen or

20 mildly turbid. I did not see any sign of oil or  
21 grease or any contaminants so to speak upstream.

22 Q. But you did see -- strike that.

23 What did you see downstream from  
24 the farm tile?

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1 A. A heavy oil sheen.

2 Q. What did you see coming out of the  
3 farm tile?

4 A. A heavy oily substance even more  
5 concentrated than in the creek.

6 Q. Can you please turn to the page of the  
7 sampling report where it says oil gravimetric.

8 MR. JAWGIEL: I'm sorry. Where are  
9 you referring?

10 MR. MURPHY: Back on Exhibit 21.

11 MR. JAWGIEL: Thank you.

12 BY MR. MURPHY:

13 Q. Can you explain what oil gravimetric  
14 means?

15 A. It's a -- well, gravimetric is, as I  
16 understand it, the way the analysis is done. It's  
17 how they determine the concentration of oil and  
18 grease in that sample.

19 Q. Okay. After you collected the  
20 samples, did you send them out for analysis?

21 A. Yes.

22 Q. Did you get the sample analysis back?

23 A. Yes.

24 Q. What were the results?

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1 A. The concentrations of oil gravimetric  
2 was 664 milligrams per liter.

3 Q. Thank you.

4 Getting back now to your  
5 observations when you collected the samples, the  
6 observations you made at Avon drainage ditch, you  
7 mentioned certain things that you saw. Did you  
8 notice any smells?

9 A. I did note a petroleum-based smell.

10 Q. Where?

11 A. Near the farm tile.

12 Q. Would you associate that with what was  
13 coming out of the farm tile?

14 A. Yes, I did.

15 Q. Okay. Is the sampling report a  
16 document used in the ordinary course of Illinois EPA  
17 business? I'm referring to Exhibit 21.

18 A. Yes.

19 Q. Is Exhibit 21 kept in the ordinary  
20 course of Illinois EPA business?

21 A. Yes.

22 Q. Is that a true and accurate copy of  
23 the sampling report?

24 A. Yes.

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1 Q. Thank you.

2 A. The only thing I might say that  
3 doesn't appear to be here is the cover sheet where I  
4 requested the organics.

5 Q. But everything else was true and  
6 accurate?

7 A. Right.

8 Q. Okay. Mr. Kallis, I'd like to direct  
9 your attention to Exhibit No. 22 in the binder.  
10 Please take a moment to look through that document.

11 A. Yes. It's a legal support inspection  
12 dated March -- well, no, not dated. It's a legal  
13 support inspection. The inspection occurred on  
14 March 22, 1995.

15 Q. So that report documents the  
16 inspection that occurred on March 22,

17 '95?

18 A. Yes.

19 Q. Did you sign this memo?

20 A. Yes, I did.

21 Q. You also prepared this memo?

22 A. Yes.

23 Q. Is this a document used in the

24 ordinary course of normal EPA business?

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1 A. Yes, it is.

2 Q. Is it a document kept in the ordinary  
3 course of EPA business?

4 A. Yes.

5 Q. Is that a true and accurate copy of  
6 that report?

7 A. Yes.

8 Q. Okay. Now, with respect to the  
9 inspection you conducted on March 22, 1995, did you  
10 talk to anyone on behalf of Skokie Valley Asphalt  
11 during your visit that day?

12 A. Yes. I talked to Richard Frederick.

13 Q. Okay. What did Mr. Frederick tell you  
14 and what -- strike that.

15 What did you say to him and what

16 did he say to you?

17 A. Well, we walked all over the property.  
18 We looked into that manhole that at one time they  
19 did pump into, and we walked through the property  
20 and there did not appear to be any overt  
21 contamination.

22 Q. You mentioned the manhole. Did  
23 Mr. Frederick tell you where that manhole discharged  
24 to?

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1 A. No.

2 Q. Did Mr. Frederick say anything to you  
3 about underground storage tanks on the Skokie Valley  
4 Asphalt property?

5 A. I asked them if there were any and at  
6 the time he said no.

7 Q. Why did you ask Mr. Frederick -- or  
8 Richard Frederick if there were underground storage  
9 tanks on the Skokie Valley Asphalt property?

10 A. An employee of the Lake County Health  
11 Department had communicated to me that there were.

12 Q. Were there any other reasons why you  
13 would suspect there to be an underground storage  
14 tank on that property?

15           A.       Just from the nature of the kind of  
16 business they have and -- yeah.

17           Q.       Okay. Did you observe anything about  
18 contaminated water on that day?

19           A.       Yes. I did note and I do remember  
20 that the discharge was still occurring at the Avon  
21 drainage ditch. One update that did occur is that  
22 the Grayslake Fire Department did put in some booms  
23 in the creek downstream.

24           Q.       What are booms?

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1           A.       Booms are, again, sort of an oil  
2 separator, only a portable one. They are installed  
3 to absorb oil that's moving on the surface.

4           Q.       Did you again observe oil in the Avon  
5 drainage ditch?

6           A.       Yes.

7           Q.       Was that coming again from the farm  
8 tile?

9           A.       Yes.

10          Q.       What is the purpose of absorbing booms  
11 used in that fashion?

12          A.       Again, to collect oil that's flowing  
13 in a ditch.

14 Q. Prior to it flowing anywhere else?

15 A. Right.

16 Q. Okay. Mr. Kallis, I'd like to direct  
17 your attention to tab 23 in the binder. Take a  
18 moment to look through that document.

19 (Witness perusing  
20 the document.)

21 A. Okay. There was a memo to  
22 Chuck Gunnarson of the division of legal  
23 counsel from myself dated May 12, 1995.

24 Q. Chuck Gunnarson is another EPA

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1 employee?

2 A. Yes. He's employed with the division  
3 of local counsel.

4 Q. Is this document used in the ordinary  
5 course of Illinois EPA business?

6 A. Yes.

7 Q. Is this document kept in the ordinary  
8 course of Illinois EPA business?

9 A. Yes.

10 Q. Is this a true and accurate copy of  
11 that report?

12 A. Yes.

13 Q. Okay. Turning your attention now to  
14 tab 24 in the binder, take a moment to go through  
15 that document.

16 (Witness perusing  
17 the document.)

18 A. Okay. Yes, it was a legal support  
19 inspection dated December 5, 1995 by myself.

20 Q. The inspection was dated December 5,  
21 '97?

22 A. That's when the inspection was  
23 conducted.

24 Q. Does this report memorialize your

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1 observations from that inspection?

2 A. In the facility site review, that's  
3 correct.

4 Q. Okay. Is this document used in the  
5 ordinary course of Illinois EPA business?

6 A. Yes.

7 Q. Is this a document kept in the  
8 ordinary course of Illinois EPA business?

9 A. Yes.

10 Q. Is this a true and accurate copy of  
11 that report?

12           A.       Yes.

13           Q.       Okay.  Now, was Skokie Valley Asphalt  
14 still discharging to waters of the State in 1997?

15                   MR. JAWGIEL:  I'm going to object to  
16 the foundation, your Honor.

17                   THE WITNESS:  Yes.

18                   HEARING OFFICER SUDMAN:  Overruled.

19 BY MR. MURPHY:

20           Q.       Your answer was yes?

21           A.       Yes.  Sorry.

22           Q.       Did Skokie Valley Asphalt have an  
23 NPDES permit to do so at the time?

24           A.       No, it didn't.

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1                   MR. MURPHY:  Madam Hearing Officer,  
2 may I have a moment?

3                   HEARING OFFICER SUDMAN:  Yes.

4                                   (Brief pause.)

5                   MR. MURPHY:  Madam Hearing Officer, at  
6 this time I have no more questions.

7                   HEARING OFFICER SUDMAN:  Thank you.

8                                   Let's go off the record for just a  
9 moment.

10                   THE REPORTER:  Sure.

11 (Whereupon, a discussion  
12 was had off the record.)

13 HEARING OFFICER SUDMAN: Okay. We're  
14 back on the record just to say that we will  
15 be taking a lunch hour. We will restart at  
16 1:15. It is now 12:15, so please be back in  
17 one hour.

18 MR. JAWGIEL: If I may also just  
19 state that we did state that we will ask  
20 Mr. Kallis some questions, but we are  
21 reserving our right to call him in our case  
22 in chief pursuant to our 237 notice.

23 HEARING OFFICER SUDMAN: Okay. Thank  
24 you.

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1 (At 12:15 p.m. a  
2 luncheon recess was taken to  
3 1:15 p.m.)

4 HEARING OFFICER SUDMAN: We'll go back  
5 on the record; it is 1:15. We are back from  
6 lunch.

7 Mr. Kallis, you may please take  
8 the witness stand again, and I will remind  
9 you that you are still under oath.

10 Mr. Jawgiel, your witness, please.

11 MR. JAWGIEL: Thank you.

12 Just so the record is clear, we  
13 may dive into some areas that we objected to  
14 for our motion in limine. I'm not waiving  
15 those objections. Given the ruling of the  
16 hearing officer, I think I'm obligated to go  
17 into those subject matters.

18 HEARING OFFICER SUDMAN: Okay.

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1 AFTERNOON SESSION

2 CHRIS KALLIS,

3 called as a witness herein, having been previously  
4 duly sworn, was examined and further testified as  
5 follows:

6 C R O S S - E X A M I N A T I O N

7 BY MR. JAWGIEL:

8 Q. Good afternoon, sir.

9                                   Mr. Kallis, you had mentioned one  
10 incident when you experienced some hostility in  
11 going out to the site together and sampling and was  
12 unable to do so at some point in time and I've  
13 looked through your reports and I don't see any  
14 other notations regarding that. Was that a single  
15 incident?

16                   A.       It was a single incident.

17                   Q.       And how many times had you been out to  
18 the facility, the Skokie Valley Asphalt facility --  
19 if I use Skokie Valley, you understand what we're  
20 talking about -- since that incident when there was  
21 hostility?

22                   A.       There's been none.

23                   Q.       How many times had you been out there  
24 three, four, five times since that incident?

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1                   A.       I believe even more than that and I  
2 had not experienced hostility.

3                   Q.       And you've taken samples during those  
4 other visits, have you not?

5                   A.       At times.

6                   Q.       At any point in time when you went out  
7 to the actual property of Skokie Valley, did you

8 ever have a warrant?

9 A. No.

10 MR. MURPHY: Objection, relevance.

11 HEARING OFFICER SUDMAN: I'll allow  
12 it.

13 THE WITNESS: No, sir, I haven't.

14 BY MR. JAWGIEL:

15 Q. Now, do you have a big book in front  
16 of you?

17 A. Yes, I do.

18 Q. Now, just so we have an understanding,  
19 you realize that in the area where Skokie Valley was  
20 located there were other properties that were not  
21 Skokie Valley; is that correct?

22 A. They are surrounded by other  
23 properties, that's correct.

24 Q. There's actually a farm that is in

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1 between Skokie Valley property and the Avon drainage  
2 ditch; is that correct?

3 A. That's correct.

4 Q. And that's an active farm, if you  
5 will?

6 A. The last I visited there, they were

7 farming on it.

8 Q. Okay. And there's also -- I believe  
9 there's railroad tracks that run between the Skokie  
10 Valley property and the Avon drainage ditch as well;  
11 is that correct?

12 A. Between?

13 Q. Well, somewhere in that vicinity; is  
14 that correct?

15 A. There are railroad tracks, but if  
16 you're asking me of the railroad tracks between  
17 where the tile was and the facility, I would say no.  
18 But yes, there are railroad tracks there.

19 Q. And is there a car dealership -- in  
20 the general vicinity of this within, let's say, a  
21 two-mile radius of Skokie Valley, is there a car  
22 dealership in that area?

23 A. Yes. There's a car dealership on  
24 Route 120, which is to the north of Skokie Valley

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1 Asphalt. The last I saw there was one there.

2 Q. Okay. And what other types of  
3 entities or businesses or anything are within this  
4 two-mile radius of Skokie Valley?

5 A. Two miles extends into downtown, so

6 there's all sorts of retail businesses and diners  
7 there and things like that.

8 Q. Okay. I think you had indicated that  
9 the first time that you had noticed any discharge  
10 out of the farm tile was when you were out there  
11 when?

12 A. The first time that I ever observed a  
13 discharge from the farm tile, that I ever actually  
14 looked into a discharge of the farm tile was in that  
15 1987 incident.

16 Q. Okay, the 1987 incident.

17 Now, with respect to the 1987  
18 incident, was there any prosecution from that?

19 A. No.

20 Q. Did you recommend any prosecution?

21 MR. MURPHY: Objection. Madam Hearing  
22 Officer, this witness -- there's been no  
23 foundation that this witness has anything to  
24 do with recommendations made to the Illinois

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1 EPA or the Attorney General's Office about  
2 whether -- the filing of prosecution against  
3 potential defendants. It's outside the  
4 scope; it's not relevant either.

5 MR. JAWGIEL: The scope of his duties  
6 would have been established by direct  
7 examination and it was very loose. So  
8 essentially it was very loose, so the door is  
9 open to allow me to ask him these questions.

10 HEARING OFFICER SUDMAN: You're asking  
11 him if he recommended it?

12 MR. JAWGIEL: Right.

13 HEARING OFFICER SUDMAN: I'll allow  
14 it.

15 THE WITNESS: I recommended a  
16 compliance inquiry letter of some type if my  
17 memory serves me correctly.

18 BY MR. JAWGIEL:

19 Q. Okay. And was there compliance?

20 A. Yeah, I think there was.

21 Q. How long after you first recognized  
22 that there was this oily substance back in 1987?

23 MR. MURPHY: Madam Hearing Officer, I  
24 thought I heard him say was there

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1 compliance -- or I didn't understand the  
2 question. Can I have him repeat the  
3 question, please?

4 HEARING OFFICER SUDMAN: Would you  
5 please repeat the question?

6 MR. JAWGIEL: Sure.

7 BY MR. JAWGIEL:

8 Q. Was there compliance by Skokie Valley  
9 back in 1987 with respect to the compliance letter  
10 that you recommended?

11 A. I don't understand your question. I'm  
12 sorry.

13 HEARING OFFICER SUDMAN: I don't  
14 either. Are you asking was there a compliance  
15 letter?

16 MR. JAWGIEL: No.

17 BY MR. JAWGIEL:

18 Q. You had indicated that a compliance  
19 letter was something you recommended, is that  
20 correct, after you realized what happened in 1987?

21 MR. MURPHY: Well, now I have a  
22 different objection. There still has been no  
23 foundation that one was actually sent based  
24 on the recommendation.

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1 HEARING OFFICER SUDMAN: Well, that's  
2 true. I didn't get that leap either. Do you

3           want to go back a little?

4 BY MR. JAWGIEL:

5           Q.       Well, was there a compliance letter  
6 sent with respect to the incident back in 1987?

7           A.       To the best of my recollection, I  
8 think was, yes.

9           Q.       Okay. Now, was there compliance with  
10 that letter by Skokie Valley back in 1987?

11          A.       Sir, are you asking me that after that  
12 incident did a similar incident take place?

13          Q.       No. I'm asking you that after that  
14 incident in 1987 after the compliance letter that  
15 you believe was sent out was sent out whether or not  
16 Skokie Valley complied with the recommendations of  
17 the letter in your opinion?

18          A.       Well, a compliance inquiry letter -- a  
19 compliance inquiry letter, what it does is asks --  
20 we don't send those out anymore. We send out  
21 violation notices, but it serves the same purpose.  
22 It gave them a notice that they were in violations  
23 that day and what they're going to do to remedy that  
24 in the future and --

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1           MR. JAWGIEL: I would ask that his

2 answer be struck as nonresponsive.

3 HEARING OFFICER SUDMAN: Mr. Kallis --

4 HEARING OFFICER SUDMAN: I'm sorry.

5 MR. MURPHY: He did respond.

6 THE WITNESS: I'm sorry --

7 HEARING OFFICER SUDMAN: That's okay.

8 I realize you're giving a lot of background  
9 information but he really didn't ask for it,  
10 so would you please repeat the question that  
11 you did ask?

12 MR. JAWGIEL: I don't quite remember.

13 If I could have it read back --

14 HEARING OFFICER SUDMAN: Would the  
15 court reporter please read it back?

16 (Whereupon, the requested  
17 portion of the record  
18 was read accordingly.)

19 THE WITNESS: Since I don't have the  
20 letter in front of me, I don't think I can  
21 answer that. I'm sorry.

22 HEARING OFFICER SUDMAN: That's okay.  
23 If you don't know, just say you don't know.

24

1 BY MR. JAWGIEL:

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

3 What month was it that you first noticed this  
4 incident in 1987?

5 A. I noticed it two days after the  
6 complaint. I think it was in March. I had my  
7 note --

8 Q. Okay. Did you go out there in April  
9 of 1987 to find out if there was still a discharge  
10 that you recognized in March of 1987?

11 A. I don't remember if there was a field  
12 follow-up right after that.

13 Q. Okay. So you did nothing to follow-up  
14 with respect to the discharge in 1987 as you sit  
15 here today?

16 MR. MURPHY: Objection, misconstrues  
17 the prior testimony. He says he doesn't  
18 remember.

19 MR. JAWGIEL: It's cross-examination,  
20 your Honor. I'm giving a lot of latitude.

21 HEARING OFFICER SUDMAN: That's true.  
22 I'll allow it.

23 THE WITNESS: Repeat.

24 MR. JAWGIEL: Sure.

1 BY MR. JAWGIEL:

2 Q. Is it fair to say that you did no  
3 follow-up whatsoever with respect to the discharge  
4 that you identified in March of 1987?

5 A. No, because I recommended to our  
6 regional manager that a compliance inquiry letter be  
7 written.

8 Q. Okay. Beyond the recommendation of a  
9 compliance letter, did you do any other follow-up  
10 with respect to the March 1987 discharge as you  
11 identified?

12 A. I don't remember.

13 Q. Mr. Kallis, we talked a little bit  
14 about your educational background. Do you have a  
15 degree in chemistry?

16 A. No, sir.

17 Q. Have you ever conducted a chemical  
18 analysis test of any samples that you have taken?

19 MR. MURPHY: Madam Hearing Officer, I  
20 have an objection on the grounds of  
21 relevancy. I'll have a standing objection to  
22 this line of questioning.

23 HEARING OFFICER SUDMAN: Okay.

24 MR. JAWGIEL: It goes to his

1 qualifications.

2 HEARING OFFICER SUDMAN: And it also  
3 goes to evidence on the motions that he  
4 filed, so I'm going to allow it.

5 THE WITNESS: I've done field analyses  
6 for dissolved oxygen using a kit and acid  
7 bottles, I've done that. Other than that,  
8 using hot kits for determining pH, no.

9 BY MR. JAWGIEL:

10 Q. Okay. So with respect to the reports  
11 that we see -- the various chemical analysis reports  
12 we see attached to your memos, you don't know  
13 whether or not that information is accurate or not;  
14 is that correct?

15 A. Are you talking about the analysis,  
16 the samples I took from Skokie Valley Asphalt?

17 Q. The analysis you took from the Avon  
18 drainage ditch -- from the farm tile. There was an  
19 analysis that was done to that sample, but you don't  
20 know whether or not those analyses values are  
21 accurate or not, do you?

22 A. No.

23 Q. I want to refer you to Exhibit 22.  
24 Take a look at Exhibit 22 and in particular I'm

1 going to refer you to your summary of findings.

2 Now, was it your opinion as you wrote here that the  
3 present contamination in the Avon drainage ditch is  
4 pure speculation?

5 A. At that time, yes.

6 Q. And that your best guess is that the  
7 contamination is historical?

8 A. I did write that, yes.

9 Q. And when you said historical, you were  
10 talking about that in 1988, there was a closure of  
11 that particular tile; is that correct?

12 A. Yes.

13 Q. Did you take any samples of any  
14 material whatsoever that were on the Skokie Valley  
15 site in March of 1995 or after to analyze them to  
16 compare it to what was in the Avon drainage ditch?

17 A. No, sir.

18 Q. At no point in time are you aware of  
19 anyone analyzing any materials that were present on  
20 the Skokie Valley site at the time that there was  
21 this discharge from the farm tile into the Avon  
22 drainage ditch; isn't that correct?

23 A. That's correct.

24 Q. Nobody as far as you're aware did a

1 chemical analysis in order to determine whether or  
2 not the materials that were present on the Skokie  
3 Valley site contemporaneous to what was going on in  
4 the Avon drainage ditch in 1995 regarding this  
5 discharge would be the same types of material; is  
6 that correct?

7 A. That was a long question. Can you  
8 repeat it?

9 Q. Sure and maybe I can shorten it.  
10 You're not aware of anybody or any  
11 entity taking a sample from the Skokie Valley site  
12 as it existed at the time of this discharge into the  
13 Avon drainage ditch in 1995 in order to compare the  
14 materials that were on the site to what was in the  
15 ditch?

16 A. That's correct.

17 Q. Sir, isn't it true that you are aware  
18 that other drain tiles may contribute into this farm  
19 tile where this discharge was coming from; is that  
20 correct?

21 A. That's true.

22 Q. And you're not quite sure what other  
23 contributories there may be into this drain tile  
24 because you never looked into what those

1 contributory tiles may be; is that correct?

2 A. I tried looking into it but it's very  
3 difficult.

4 Q. So as you sit here today, you don't  
5 know whether or not what you pulled out of the farm  
6 tile back in March of 1995 was actually some  
7 material that came from Skokie Valley, isn't that  
8 correct, other than -- it could come from other  
9 sources as well?

10 A. It's technically possible. That's  
11 correct.

12 Q. Did you go to the car dealership  
13 that's in this area to determine whether or not  
14 there may have been an oily discharge in its manhole  
15 cover?

16 A. No.

17 Q. Did you go to the farm and see if  
18 there was oily discharge in the farm's manhole cover  
19 at the time that you were out in Skokie Valley in  
20 March of 1995?

21 A. Yes.

22 Q. Did you find anything?

23 A. No.

24 Q. And as you already said, you went to

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1 Skokie Valley, looked at their manhole, and you  
2 didn't see anything that was consistent to what was  
3 in the Avon Creek; is that correct?

4 A. That's correct.

5 Q. Did you take any soil borings of the  
6 land on the Skokie Valley site to its border to  
7 determine whether or not there may have been oil  
8 that leached out of this drain tile into the soil?

9 A. No, sir.

10 Q. Now, with respect to oily products,  
11 you've been using the term oil. With respect to  
12 what you saw in March of 1995 coming out of this  
13 drain tile, you don't know whether it was motor oil,  
14 do you, sir?

15 A. Not by what I saw.

16 Q. You don't know whether or not it was  
17 gasoline or a gasoline-based product, do you, sir?

18 A. The samples that I took out of the  
19 tile, I did take organics and it came up with  
20 organics that you could associate with  
21 petroleum-related substances.

22 Q. Okay. Petroleum related substances

23 could be fertilizer, isn't that correct? It's a  
24 petroleum-based substance, isn't it?

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1 A. Some are.

2 Q. It could be motor oil? That's a  
3 petroleum base?

4 A. Yes.

5 Q. It could be diesel fuel; is that  
6 correct?

7 A. That's correct.

8 Q. It could be heating oil; is that  
9 correct?

10 A. Yes.

11 Q. It could be some household products  
12 that have oil -- or petroleum-based solvents in  
13 them?

14 A. That's correct.

15 Q. And as we sit here today, you can't  
16 tell us which product actually was present in that  
17 sample among those list of products; isn't that  
18 correct?

19 A. I can only tell you what organics were  
20 found in the analysis that was given to me.

21 Q. But that's not my question, sir.

22                               You can't tell me whether it was  
23 gasoline or a gasoline-based product or oil for a  
24 motor, for a car or truck or whatever the case may

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1 be, diesel fuel or any other products we just  
2 listed, correct?

3           A.       That's correct.

4           Q.       Has it been your experience, sir, that  
5 when you put -- well, let's take a step back.

6                               We keep talking about this drain  
7 tile. A drain tile was made out of what, was it  
8 made out of ceramic, was it made out of metal, was  
9 it made out of both? What was your understanding of  
10 the farm drain tile that you took this substance out  
11 of?

12           A.       I don't know all of the -- I know some  
13 of it was made out of metal.

14           Q.       Okay. The part that you could see  
15 coming out of the ground was made out of metal; is  
16 that correct?

17           A.       Yes.

18           Q.       Has it been your experience that after  
19 you have this external metal that's generally the  
20 part that's under the ground is made out of some

21 sort of ceramic or terra-cotta material?

22 A. Tile, yes, sometimes.

23 Q. Okay. Now, has it been your

24 experience, sir, that when you put an oily substance

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1 in a terra-cotta or clay type of tile, that has a  
2 tendency of leaking out because it's a porous  
3 material?

4 A. I haven't had too much experience but  
5 I know what you're saying.

6 Q. Well, it can, can it not?

7 A. I'm not sure on that one. I'm sorry.

8 Q. Okay. Isn't it true, sir, you have no  
9 information that Larry Frederick put the oil into  
10 the drain tile that eventually went out into the  
11 Avon drainage ditch?

12 A. I have no information that Larry  
13 Frederick put oil into the drainage ditch.

14 Q. You have no information that anyone at  
15 Larry Frederick's direction did so either; isn't  
16 that correct?

17 A. That's correct.

18 Q. You have no information whatsoever  
19 that Richard Frederick actually put the substance

20 that you collected out of the farm tile in March of  
21 1995?

22 A. That's correct.

23 Q. You have no information whatsoever  
24 that anyone under Richard Frederick's authority

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1 placed the oily substance that you identified in  
2 March of 1995 into the farm tile; is that correct?

3 A. That's correct.

4 Q. You have no information that would  
5 lead you to believe that anyone from Skokie Valley,  
6 any of their employees, actually placed the  
7 substance that was in the drain tile that you  
8 collected in March of 1995; is that correct?

9 A. That's correct.

10 Q. I want to refer you to Exhibit 23.  
11 It's your memo dated May 12, 1995. Do you have that  
12 before you, sir?

13 A. Yes, the May 12, 1995 memo.

14 Q. Okay. Now, in the second full  
15 paragraph we see that you referred to a report by a  
16 Betty Lavis from the USEPA and it's attached to this  
17 document, isn't that correct, when you drafted it  
18 because you indicate attached is a report by

19 Betty Lavis? It was your intention to attach it; is  
20 that correct?

21 A. Yes.

22 Q. Now, Exhibit 24 doesn't contain the  
23 attachment, does it, sir?

24 A. No, it doesn't.

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1 Q. Okay. But if we look at Exhibit 25,  
2 which the State didn't present to you -- take a look  
3 at it.

4 A. Yes.

5 Q. Exhibit 25 is that memo from  
6 Betty Lavis that you refer to in your report, which  
7 is Exhibit 23; is that correct?

8 A. I believe so, yes.

9 Q. So an accurate representation of  
10 Exhibit 23 would be including the attachment of  
11 Exhibit 25, isn't that correct, to make sure that  
12 the document is complete and accurate, right?

13 A. That's a legal determination. I'm not  
14 sure I know where you're coming from.

15 Q. Well, when you submitted your report  
16 in --

17 A. '95, I know.

18 Q. -- May 12 of '95, you attached  
19 Ms. Lavis' report to it as a supporting document to  
20 what you wrote in your memo?

21 A. Yes, I did.

22 Q. And you relied upon what you saw in  
23 Betty Lavis' report for the basis of your opinions  
24 that we see here?

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1 A. Yes, sir.

2 Q. And that memo along with your memo --  
3 when I say that memo, I'm talking about  
4 Betty Lavis' memo -- and your memo were kept in the  
5 ordinary course of business, were they not?

6 A. Yes, as an attachment to that memo.

7 Q. Right. And as we've already  
8 established, as an attachment to that memo, that  
9 type of document at the Illinois EPA would have been  
10 kept in the ordinary course of business as an  
11 attachment to your memo; isn't that correct?

12 A. Yes.

13 Q. And what we see in Exhibit 25 is  
14 actually a true and accurate copy of the attachment  
15 that you attached to your memo of May 12, 1995?

16 A. You got it.

17 Q. Okay. Now, you used Betty Lavis'  
18 report as a basis for your conclusion that this oily  
19 substance, which we don't know what it is, came from  
20 the Skokie Valley site; is that correct?

21 A. Yes, sir. I believe that's correct.

22 Q. Do you see anywhere in her report  
23 where she makes the statement that this substance  
24 definitively came from the Skokie Valley site?

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1 A. No.

2 Q. So it was your interpretation of what  
3 Ms. Lavis wrote that the oily substance came from  
4 the Skokie Valley site; isn't that correct?

5 A. That's correct.

6 Q. But that was your interpretation  
7 without any additional testing, without any soil  
8 borings, without taking sampling from the Skokie  
9 Valley site, without doing anything else; is that  
10 correct?

11 A. That's correct.

12 Q. And did you find the reports and the  
13 memorandum of Betty Lavis to be reliable documents  
14 for basing your opinion regarding what was going on  
15 in the Skokie Valley site at the time of this

16 discharge into the Avon drainage ditch? I'm talking  
17 about the discharge in 1995.

18 MR. MURPHY: Your Honor, I object.  
19 I'm not sure I understand the question; it  
20 was a long one.

21 HEARING OFFICER SUDMAN: Are you  
22 asking if he relied on the Lavis memo?

23 MR. JAWGIEL: What I'm asking him is  
24 something a little bit more specific. What

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1 I'm asking him is in his opinion, are these  
2 types of documents from the USEPA and  
3 Betty Lavis reliable sources of information  
4 to rely on to base his opinion.

5 HEARING OFFICER SUDMAN: Okay.

6 THE WITNESS: I considered it so.

7 BY MR. JAWGIEL:

8 Q. Towards the end of your direct  
9 testimony, you identified a memo, which I believe  
10 was December 5, 1997 and it's  
11 Exhibit 24 -- if I can refer you to that exhibit --

12 A. You're talking about the legal support  
13 inspection, correct?

14 Q. Field support inspection, yeah.

15 Now, let's just get a little  
16 understanding of why you did this legal support  
17 inspection. Was this done in order to determine  
18 whether or not an NPDES permit would be issued to  
19 Skokie Valley?

20 A. No, sir.

21 Q. When you referred to that there was a  
22 discharge in this December 1997 report, were you  
23 talking about discharge of storm water? What  
24 contaminants are you talking about that you claim

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1 Skokie Valley was putting into the Avon drainage  
2 ditch in this particular period of time that formed  
3 the basis of the  
4 December 5, 1997 inspection report?

5 A. Well, the basis of this report was,  
6 one, an explanation of the NPDES permit status; two,  
7 the history; three, the facility site review of what  
8 I saw that day and then four, a summary of findings.

9 Q. Okay. I thought you had given the  
10 opinion on direct examination that based on this  
11 report, it was your opinion that Skokie Valley was  
12 continuing to discharge material into the Avon  
13 drainage ditch, is that a correct characterization

14 of your testimony?

15 A. I don't think so.

16 Q. Okay. So in your opinion, when did  
17 Skokie Valley stop discharging materials prior to  
18 December 5, 1997 into the Avon drainage ditch?

19 A. To the best of my knowledge, it was  
20 soon after Mr. Huff was hired.

21 Q. Okay. So that would be back in 1995?

22 A. Yes.

23 Q. And you're not aware of any problems  
24 with respect to Skokie Valley discharging material

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1 into the Avon drainage ditch since 1995; isn't that  
2 correct?

3 A. The Avon drainage ditch, that's  
4 correct.

5 Q. Are you aware of Skokie Valley --  
6 well, let me just take a step back. Strike that  
7 question, please. Let me take a step back.

8 You had indicated that the report,  
9 which is Exhibit 24, has to do with the NPDES  
10 permit?

11 A. Right.

12 Q. Okay. And it was your understanding

13 that at the time you wrote this report, Skokie  
14 Valley had applied for a renewal of its permit; is  
15 that correct?

16 A. There had been a renewal application  
17 in, that's correct.

18 Q. And you were going out to the site to  
19 determine what in December 5 of 1997?

20 A. That's what the facility site review  
21 is, a field verification of the day.

22 Q. It was to determine what, sir? When  
23 you say a field site verification --

24 A. Well, it was just to determine what

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1 was happening on that day. And I have a summary of  
2 findings that they were discharging the waters to  
3 the State. I didn't say Avon drainage ditch without  
4 an NPDES permit.

5 Q. Okay. When you say they were  
6 discharging water into the State --

7 A. Into waters of the State.

8 Q. -- into waters of the State, what were  
9 they discharging?

10 A. They were discharging out of their  
11 NPDES outfall, which was no longer permitted under

12 an NPDES permit.

13 Q. Okay. Did you test that?

14 A. I don't believe I did that day, no.

15 Q. Okay. So you don't have any test  
16 results to determine whether or not the water that  
17 was being discharged when you were out at the site  
18 actually had contaminants in it?

19 MR. MURPHY: Madam Hearing Officer, I  
20 have an objection as to relevance.

21 MR. JAWGIEL: They brought this up.  
22 They brought this whole line up about --

23 MR. MURPHY: If they are discharging  
24 without a permit to Grayslake, that's

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1 discharging without a permit and this was a  
2 violation by itself.

3 MR. JAWGIEL: It goes to whether or  
4 not there's some sort of contaminant cause.

5 MR. MURPHY: There's no requirement  
6 for impact to be found in any of this.  
7 That's a red herring that should not be part  
8 of these proceedings.

9 MR. JAWGIEL: It goes to 42H; clearly  
10 it goes to 42H. It goes to environmental

11 impact.

12 HEARING OFFICER SUDMAN: Well, I'm  
13 going to allow it.

14 MR. JAWGIEL: Thank you.

15 HEARING OFFICER SUDMAN: The Board can  
16 weigh your objection accordingly.

17 BY MR. JAWGIEL:

18 Q. Okay. You have no test results from  
19 this particular visit you had of Skokie Valley back  
20 in December of 1997 which would indicate to you that  
21 there were any contaminants in the discharge water  
22 that you identified?

23 A. I didn't take any samples that day.

24 Q. No samples?

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1 A. No samples that day.

2 Q. Okay. When was the last time you took  
3 samples of Skokie Valley with respect to the  
4 discharge water?

5 A. I believe it was in '92 where we first  
6 established that they had an accessible sampling  
7 point. Early in '92, I think, I took the sample.

8 Q. Okay. And that was the last time you  
9 took a sample?

10           A.       That's correct.

11           Q.       Now, with respect to this accessible

12 point, you were able to take samples from this site

13 in 1992; is that correct?

14           A.       Yes.

15           Q.       Where did you take the sample from?

16           A.       From a spigot that's in the manhole

17 that their lagoon is connected to, there second

18 cell.

19           Q.       And who put that spigot in?

20           A.       I don't know.

21           Q.       Was it there back in 1991?

22           A.       I don't know.

23           Q.       Was it there in 1992?

24           A.       It was in '92 when I was there.

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1           Q.       Okay. Was it there in 1990?

2           A.       I don't know.

3           Q.       Was it there in 1989?

4           A.       Don't know.

5           Q.       Was it there in 1988?

6           A.       I don't know when they got that

7 easement. I don't know.

8           Q.       Was it there in 1987?

9 A. I don't believe so.

10 Q. So you don't know if it was between  
11 1988 or 1987, fair statement?

12 A. Fair statement? The first time I was  
13 able to establish -- let's go back. Are you going  
14 back to the discharge itself to Grayslake?

15 Q. No. I'm talking about spigot.

16 A. Well, the spigot -- I first got -- for  
17 one thing, when they actually got the easement to  
18 put in this outfall underneath the railroad tracks,  
19 that's first, and then second is to get an  
20 acceptable sampling  
21 point. In previous inspections when you opened up  
22 the manhole, there was a pipe going through the  
23 manhole but --

24 MR. JAWGIEL: Your Honor, I would ask

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1 that his response be stricken from the record  
2 as nonresponsive.

3 MR. MURPHY: Your Honor, absolutely  
4 not. He's responding. He's trying to figure  
5 out when the spigot was there. He's trying  
6 to say during certain inspections on certain  
7 dates, it wasn't there. It's exactly

8 responsive.

9 HEARING OFFICER SUDMAN: I mean, I'm  
10 going to allow his answer to stand but can we  
11 just cut to the chase here?

12 BY MR. JAWGIEL:

13 Q. You don't know when the spigot was  
14 installed, do you, sir?

15 A. I was only -- you're right. I was  
16 only able to establish it was installed in 1992.

17 Q. You don't know if it was installed in  
18 1992, you just know it existed in '92? You don't  
19 know when it was installed, do you?

20 A. Well, I tried to establish that before  
21 but I was met with resistance.

22 Q. Once?

23 A. Once.

24 Q. Back in 1987?

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1 A. No, I think that was later.

2 Q. Where did you get the sampling that  
3 you took in March of 1995?

4 A. Are we talking about the Avon drainage  
5 ditch?

6 Q. From the farm tile.

7           A.       In earlier testimony, I explained I  
8 took a cooler and I went to the tile and grabbed a  
9 sample.

10          Q.       Okay. And you were actually on the  
11 farm property, weren't you, when you were taking  
12 that?

13          A.       Yes, I was.

14          Q.       Did you ever notify Skokie Valley  
15 Asphalt that they had failed to file a DMR?

16          A.       Did I personally?

17          Q.       Yes.

18          A.       No.

19          Q.       Was that part of your responsibility  
20 as someone in the field for this particular  
21 department to look for a compliance of filing DMRs?

22          A.       The only administrative responsibility  
23 I have in the field is to verify whether the DMRs  
24 are correct.

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1           Q.       So whether or not one is filed or not  
2 is not your responsibility; is that correct?

3           A.       It's my responsibility if we have  
4 violations to at least alert the compliance  
5 assurance section if we have violations. There is

6 an auditing system as I understand it.

7                                 But I do acknowledge if there are  
8 or not submittals of DMRs. But whether it's my  
9 personal responsibility to initiate a compliance  
10 inquiry letter, it can be.

11                 Q.         Okay. Did you ever initiate a  
12 compliance letter regarding missing DMRs for Skokie  
13 Valley?

14                 A.         I might have mentioned it on a report  
15 or memo, but I don't remember.

16                 Q.         You might have mentioned it? Do you  
17 have that report or memo with you?

18                 A.         I don't remember.

19                 Q.         So you're speculating?

20                 A.         I'm speculating, right.

21                 Q.         Okay. It's been your experience that  
22 the Illinois EPA loses DMRs on occasions; isn't  
23 that correct?

24                 A.         The Illinois EPA loses DMRs?

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1                 Q.         (Indicating.)

2                 A.         I personally haven't heard of it, but  
3 I imagine anything is possible.

4                 Q.         In your 22 years of experience with

5 the Illinois EPA, are you aware of the EPA ever  
6 mishandling documents that were submitted by a  
7 facility, misfiling them, sending them to the wrong  
8 person, sending you documentation that wasn't within  
9 your region or anything along those lines?

10 A. Yes, I have.

11 MR. MURPHY: Madam Hearing Officer,  
12 that was a compound question.

13 HEARING OFFICER SUDMAN: That was a  
14 pretty compound question but the gist of it  
15 was --

16 MR. JAWGIEL: Mishandling of  
17 documents.

18 HEARING OFFICER SUDMAN: --  
19 mishandling of documents, so --

20 THE WITNESS: Yes, I have.

21 BY MR. JAWGIEL:

22 Q. Were Mr. Larry Frederick and  
23 Mr. Richard Frederick involved personally in the  
24 renewal of the NPDES permit as far as you're aware?

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1 MR. MURPHY: Objection, calls for  
2 speculation.

3 MR. JAWGIEL: I said as far as he's

4           aware.

5                           HEARING OFFICER SUDMAN:  As far as  
6           you're aware, you can go ahead and answer it.

7                           THE WITNESS:  I believe they had some  
8           signatory requirement.

9  BY MR. JAWGIEL:

10           Q.       Beyond that, anything else that you're  
11           aware of that they did?

12           A.       I wasn't privy to the actual  
13           application process on their behalf.

14           Q.       Was it your understanding that the  
15           NPDES permit that was issued to Skokie Valley named  
16           Skokie Valley as the permittee only?

17           A.       Yes.

18           Q.       And is it your understanding that  
19           Skokie Valley as permittee was the entity required  
20           to submit the DMRs?

21           A.       Yeah, I looked at that as the entity,  
22           that's correct, Skokie Valley Asphalt.  That's who  
23           was issued the NPDES permit.

24           Q.       So would it be fair to say that

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1  Larry Frederick and Richard Frederick were not the  
2  permittees under the NPDES permit as you're aware of

3 it to Skokie Valley; is that correct?

4 A. Well, the permit goes to Skokie Valley  
5 Asphalt. The responsible official is whoever signed  
6 off on the permit application.

7 Q. When you say responsible individual,  
8 are you talking about the person that certifies the  
9 NPDES at the bottom of the -- I'm sorry, certifies  
10 the DMR, at the bottom of the DMR?

11 A. Well, that's who they say. It's not  
12 always that way. I mean, there's -- whoever is the  
13 responsible official on the permit application and  
14 whoever is the responsible official on the DMR is  
15 who they say it is.

16 Q. Well, when you say responsible person  
17 on the DMR, are you talking about the person who  
18 signs the DMR certifying the DMR?

19 A. Well, that's who they say is the  
20 responsible official certifying that DMR.

21 Q. Okay. Well, who was the responsible  
22 party with respect to the NPDES permit that was  
23 issued to Skokie Valley?

24 A. You're talking about the original

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1 NPDES permit? I don't have the permit application

2 in front of me.

3 Q. So as you sit here today, you don't  
4 know who that person was?

5 A. That's correct.

6 Q. Has it been your experience in dealing  
7 with I would assume many different types of  
8 businesses that smaller businesses have difficulty  
9 understanding the requirements of the NPDES permit?

10 MR. MURPHY: Objection, calls for  
11 speculation.

12 MR. JAWGIEL: I'm asking in his  
13 experience.

14 HEARING OFFICER SUDMAN: Well, in your  
15 experience, if you have any idea, you can  
16 answer.

17 THE WITNESS: All right. In my  
18 experience, smaller -- when you say smaller,  
19 you mean -- smaller operations do have a  
20 tendency not to understand the permit  
21 conditions as a whole.

22 I mean, not all of them. The  
23 majority of them perfectly do, but I do see a  
24 pattern there sometimes with smaller

1           permittees.

2   BY MR. JAWGIEL:

3           Q.       Okay.  And what are you aware of the  
4   Illinois EPA doing in order to educate or edify the  
5   smaller permittees into what they need to do?

6                   MR. MURPHY:  Madam Hearing Officer,  
7           objection, relevance.  This has no bearing on  
8           the case.

9                   HEARING OFFICER SUDMAN:  This is  
10          really getting a little off.  I don't know  
11          where this is going.  I mean, I agree with  
12          him.

13                   MR. JAWGIEL:  Well, I think it goes to  
14          the fact that if he's out there complaining  
15          that they don't have certain things, what  
16          does he do in order to educate the person so  
17          they can comply.

18                   HEARING OFFICER SUDMAN:  But I don't  
19          think the People have alleged he's in a  
20          capacity to do that, and I don't think he's  
21          testified to anything to that effect.

22   BY MR. JAWGIEL:

23           Q.       Okay.  As you sit here today, do you  
24   have any recollection of any conversations you've

1 had with Larry Frederick and I mean, verbatim  
2 recollection?

3 A. Maybe some verbatim, yes, I guess.

4 Q. Okay. What conversation do you  
5 remember having with Larry Frederick verbatim?

6 MR. COHEN: Objection. There's no  
7 relevancy to this question to anything. If  
8 he wants to say a conversation related to  
9 DMRs or the NPDES permit, then maybe we can  
10 talk about it at this hearing.

11 HEARING OFFICER SUDMAN: I agree.  
12 Could you be a little bit more specific?

13 MR. JAWGIEL: Sure.

14 BY MR. JAWGIEL:

15 Q. Do you remember having any  
16 conversations with Larry specifically regarding the  
17 requirements of the NPDES permit?

18 A. With Larry regarding the NPDES permit,  
19 no.

20 Q. Did you ever check to see how the  
21 samples were being analyzed for Skokie Valley during  
22 the period of time where they held the NPDES permit?

23 A. I believe that during inspections I  
24 did look at some of their lab sheets which they got

1 back from Northshore Sanitary District who I believe  
2 was their contract lab.

3 Q. Okay. And when you reviewed those  
4 documents, you found them to be in order?

5 A. Generally, yes.

6 Q. Did you find anything to be out of  
7 order?

8 A. I don't remember anything being out of  
9 order specifically.

10 MR. MURPHY: I'm sorry. I've got to  
11 object on vagueness because I don't know what  
12 out of order or in order means.

13 MR. JAWGIEL: Those are the words he  
14 used. That's the testimony of the witness.

15 MR. MURPHY: That was in the question.  
16 You can't fault him for using those words in  
17 the answer when it was in the question.

18 MR. JAWGIEL: Your Honor, he used that  
19 in his prior answer.

20 HEARING OFFICER SUDMAN: Well, would  
21 you like to phrase it as anything unusual, is  
22 that what you mean?

23 MR. JAWGIEL: I think I asked him when  
24 you reviewed those documents, did you find

1           them to be -- well, let me ask this question.

2       BY MR. JAWGIEL:

3           Q.       When you reviewed those particular  
4 documents, those reports, did you find that they  
5 were in compliance or what your expectations were  
6 for analyzing those samples?

7           A.       I could verify that Northshore  
8 Sanitary District received and did an analysis.

9           Q.       You're aware that Skokie Valley  
10 Asphalt Company no longer has an NPDES permit; is  
11 that correct?

12          A.       Yes.

13          Q.       Are you also aware that the entity  
14 Skokie Valley no longer exists?

15          A.       No.

16          Q.       If, for example, Skokie Valley -- for  
17 the sake of this question -- no longer exists as a  
18 legal entity in the State of Illinois, is it your  
19 understanding they would no longer have a  
20 requirement to file a DMR in the current status of  
21 the NPDES?

22          A.       Whoever is the owner of the facility  
23 under the NPDES permit is the one who's required to  
24 submit a DMR.

1 Q. Is the NPDES permit transferable?

2 A. Yes.

3 MR. JAWGIEL: That's all I have.

4 HEARING OFFICER SUDMAN: Thank you.

5 Redirect?

6 MR. MURPHY: I have a few.

7 R E D I R E C T E X A M I N A T I O N

8 BY MR. MURPHY:

9 Q. Mr. Jawgiel asked you a question about  
10 the car dealership?

11 A. Yes.

12 Q. You testified that it was located  
13 north of Skokie Valley Asphalt?

14 A. Yes.

15 Q. It's also located north of the farm  
16 tile where you collected the samples?

17 A. Yes.

18 Q. How far north is it from there?

19 A. I don't know, maybe about a quarter of  
20 a mile.

21 Q. It's actually downstream from where  
22 you collected the samples?

23 A. Yes.

24 Q. It's downstream from where the farm

1 tile was?

2 A. Yes.

3 Q. Has it ever been your experience in  
4 your work with Illinois EPA and the work you did to  
5 ensure compliance with water pollution laws and  
6 regulations that contaminants travel against current  
7 upstream?

8 MR. JAWGIEL: Your Honor, I'm going to  
9 object. He's talking about upstream on the  
10 actual ditch itself, but we don't know the  
11 direction of the drain tiles or where the  
12 drain tiles patch in or discharge, so it's a  
13 foundational objection.

14 HEARING OFFICER SUDMAN: Well, that is  
15 true. I don't know the direction of the  
16 water, so I don't know --

17 MR. JAWGIEL: Regardless of the water  
18 direction, we don't know where the drain  
19 tiles are from the car dealership to this  
20 area, so that's really the issue because  
21 that's where the samples are coming out of is  
22 the farm tile. So regardless of how the  
23 water is moving on the drainage ditch, it has

24 no relevance whatsoever.

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1 It has to do with the  
2 configuration of these tiles underneath the  
3 ground. And it was clear from his testimony  
4 there was no investigation regarding other  
5 contributory sources into this tile,  
6 although, they thought there were some.

7 MR. MURPHY: I'll withdraw the  
8 question.

9 HEARING OFFICER SUDMAN: Okay.

10 BY MR. MURPHY:

11 Q. Wasn't it your testimony that you did  
12 try to investigate other tie-ins to the farm tile  
13 but you were unsuccessful in finding any?

14 A. That's true.

15 Q. And it's difficult to do so?

16 A. That's true. Usually farm tiles are  
17 not connected to storm sewers.

18 Q. Mr. Kallis, do you need a warrant to  
19 inspect properties to ensure compliance with the  
20 Illinois Environmental Protection Act and  
21 Regulations?

22 A. No.

23 Q. Do you need a warrant to take samples?

24 A. No.

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1 Q. There's a little bit of confusion back  
2 and forth during your cross-examination about these  
3 subject matters but I just wanted to be clear about  
4 this now.

5 Was Skokie Valley Asphalt ever  
6 permitted to discharge to Avon drainage ditch?

7 A. No.

8 Q. Was Skokie Valley allowed to discharge  
9 to Grayslake without an NPDES permit?

10 A. No.

11 Q. Was Skokie Valley Asphalt allowed to  
12 discharge into Grayslake or a tributary to Grayslake  
13 after the NPDES expired?

14 MR. JAWGIEL: Your Honor, I'm going to  
15 object. This has been asked and answered.  
16 We've been through this ad nauseam.

17 HEARING OFFICER SUDMAN: Well, he's  
18 clarifying it for the record. I don't have a  
19 problem with that.

20 THE WITNESS: No.

21 BY MR. MURPHY:

22 Q. When did you first see the accessible  
23 representative sampling point?

24 A. In '92, early '92.

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1 Q. And the NPDES was issued in 1986?

2 A. (Indicating.)

3 Q. In fact you tried to see the  
4 accessible sampling point in 1991, correct?

5 MR. JAWGIEL: I'm going to object to  
6 the leading nature. He's leading on the  
7 dates. He can simply ask him when he went  
8 out there, when he tried to do it.

9 MR. MURPHY: He's right. I can do  
10 that.

11 HEARING OFFICER SUDMAN: Okay.

12 BY MR. MURPHY:

13 Q. Did you try to see the representative  
14 sampling point in May of 1991?

15 A. Yes.

16 Q. Were you allowed to see it?

17 A. No.

18 Q. In fact, the Frederick brothers  
19 stopped you from seeing it?

20 A. Not directly, but essentially, yes.

21 MR. MURPHY: Nothing more at this  
22 time.

23 MR. JAWGIEL: Literally just a couple  
24 more questions.

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1 HEARING OFFICER SUDMAN: Okay.

2 R E C R O S S - E X A M I N A T I O N

3 BY MR. JAWGIEL:

4 Q. When you say not directly, did anybody  
5 from Skokie Valley tell you you couldn't go see it?

6 A. Well, I was more or less told to leave  
7 the premises in a rather volatile way and I thought  
8 it would be better if I left.

9 Q. Well, isn't that a direct -- directly  
10 telling you you can't go into it as opposed to not  
11 directly? I mean, it's either one or the other,  
12 sir.

13 It's either they told you to leave  
14 the premises and you were directly told you couldn't  
15 see it or they said they didn't do that?

16 A. I would find it very hard to testify  
17 in this room if I was told to get out of this  
18 building.

19 Q. Well, you have authority, don't you,

20 sir, that if someone tells you to get off the  
21 property that you could maybe file a report and that  
22 they prevented me from doing my job and that I  
23 should maybe take it to the next level so I can get  
24 on the property and do my job?

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1 A. I did write it in a report.

2 Q. Do you have that report?

3 A. Somewhere here, yeah.

4 Q. Okay. Is that the 1991 report that we  
5 were talking about here?

6 A. Yeah, I think so.

7 Q. Okay. And did you go back out there  
8 with any sort of special authority afterwards to do  
9 your job?

10 A. I didn't need the authority later on.  
11 I just went there and --

12 Q. And they let you on to do your job?

13 A. Yes, they did.

14 MR. JAWGIEL: That's all I have.

15 MR. MURPHY: No more.

16 HEARING OFFICER SUDMAN: Okay.

17 All right, Mr. Kallis, we are  
18 finished with you for now, although, I

19 understand that --

20 MR. JAWGIEL: We may call him in our  
21 case in chief tomorrow.

22 HEARING OFFICER SUDMAN: Okay.

23 (Witness excused.)

24 MR. MURPHY: Could we have a moment

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1 off the record to discuss timing for  
2 Mr. Kallis?

3 HEARING OFFICER SUDMAN: Yes.

4 Let's go off the record.

5 THE REPORTER: Okay.

6 (Whereupon, a discussion  
7 was had off the record.)

8 (Whereupon, after a short  
9 break was had, the  
10 following proceedings  
11 were held accordingly.)

12 HEARING OFFICER SUDMAN: We are back  
13 on the record and we are ready for the People  
14 to call their next witness.

15 MR. MURPHY: Madam Hearing Officer,  
16 the State calls Donald Klopke.

17 HEARING OFFICER SUDMAN: Mr. Klopke,

18           would you please have a seat over there and  
19           the court reporter will swear you in.

20                               (Witness sworn.)

21

22

23

24

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1   WHEREUPON:

2                               DONALD KLOPKE

3   called as a witness herein, having been first duly  
4   sworn, deposeth and saith as follows:

5                               D I R E C T   E X A M I N A T I O N

6   BY MR. MURPHY:

7           Q.       Would you please state your name for  
8   the record?

9           A.       Yes. My name is Don Klopke. I'm  
10 with --

11          Q.       How do you spell your last name?

12          A.       K-L-O-P-K-E.

13          Q.       Who is your employer?

14          A.       The Illinois Environmental Protection  
15 Agency.

16          Q.       How long have you been employed with

17 Illinois EPA?

18 A. March of 1980.

19 Q. So approximately 23 years?

20 A. Correct.

21 Q. Which bureau do you work for at

22 Illinois EPA?

23 A. I work currently with the office of  
24 emergency response in the emergency operations unit.

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1 Q. Did that office of emergency response  
2 go by a different name prior?

3 A. I believe back at the time of this  
4 case it was the office of chemical safety, and I was  
5 in the response unit similar -- basically the same  
6 group.

7 Q. Same function?

8 A. Same function.

9 Q. What does the office of emergency  
10 response or the emergency response unit do?

11 A. Well, our task -- our mission is to  
12 protect the public health and safety in the  
13 environment and with that we respond to emergencies  
14 dealing with chemicals, petroleum. We deal with  
15 complaints of oil or something on a body of water.

16 We, you know, do odor complaints, things like that.

17 Q. Have you worked for the ERU or  
18 emergency response unit the entire time you worked  
19 at Illinois EPA?

20 A. No. I worked with the bureau of water  
21 roughly from about -- full-time from about 1980 to  
22 1984. In '84, I started to work with the emergency  
23 response unit on a semi full-time basis, and then in  
24 '86, I believe I became a full-time member of the

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1 emergency response unit.

2 Q. Okay. How many of the situations you  
3 just described have you responded to on behalf of  
4 Illinois EPA?

5 A. Hundreds. I would say hundreds of  
6 emergencies over the course of that time.

7 Q. Okay. And how many of these hundreds  
8 of emergencies dealt with spills of oil or releases  
9 of oil?

10 A. I would say about 50 percent or more.

11 Q. What was your job title at Illinois  
12 EPA at the time -- well, let me withdraw that. I'll  
13 come back to that in a moment.

14 Can you briefly describe for the

15 board your duties while working in the emergency  
16 response unit?

17           A.       As I mentioned a little bit earlier,  
18 we respond to a lot of different types of  
19 emergencies, citizens' complaints, requests, you  
20 know, from fire departments. Our goal is to, you  
21 know, protect public health and safety. When  
22 incidents come in, complaints come in, we go out and  
23 try to do the front end of an investigation to  
24 confirm that there's something out there on certain

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1 situations.

2                   Other situations, leaking  
3 underground storage tanks, we'll get a call on the  
4 emergency end to go out -- if the material is moving  
5 off the property, we go out to assist the local fire  
6 department to try and find out who the responsible  
7 party is and then work with that responsible party  
8 to try and come up with a solution to mitigate any  
9 type of a release.

10                   We deal with the pipeline breaks,  
11 petroleum and chemicals, again, working --  
12 responding to it, verifying that there's something  
13 there and then working with the responsible party.

14 Once we find that person, we have to come up with a  
15 solution.

16 Other things that we deal with  
17 are, as I mentioned, odor complaints coming out of  
18 fixed facilities or, you know, other types of  
19 facilities. Another thing that we deal with is  
20 abandonments, things that are left on the side of  
21 the road that might be hazardous to the public.

22 We'll get a call from the local  
23 authority to try and identify it and then hopefully  
24 assist in getting those things removed. Most

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1 recently in the last couple of years we've also  
2 become part of a weapons of mass destruction team  
3 being the science component along with the state  
4 police tactical response for counter-terrorism.

5 Q. Thank you.

6 Can you briefly describe your  
7 education?

8 A. Bachelor's degree in biology from the  
9 University of Illinois, Champaign and a master's in  
10 environmental science in civil engineering also from  
11 the University the Illinois in Champaign.

12 Q. Was the degree a bachelor's of

13 science?

14 A. Yes.

15 Q. And the master's was a master's of  
16 science?

17 A. Correct.

18 Q. What about training provided by  
19 Illinois EPA and/or any other agency?

20 A. Every year we're required through OSHA  
21 to have an eight-hour refresher training and that's  
22 provided by the state. We also have the opportunity  
23 probably on the average of a week of additional  
24 training that might be provided by the USEPA who's a

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1 big source in training due to the lack of cost to  
2 attend also, you know, attend training through the  
3 Illinois Fire Service Institute.

4 I attended a national spill  
5 response school provided from the Corpus Christi  
6 University in Texas, the U.S. Coast Guard response  
7 school in Chicago, air monitoring, sampling of  
8 hazardous materials, emergency response to hazardous  
9 materials, things like that.

10 Q. The spill classes that you mentioned,  
11 did they relate to oil spills?

12 A. That's correct.

13 Q. So both the one in Corpus Christi and  
14 the one by the Coast Guard?

15 A. Yes.

16 Q. Are you familiar with the site  
17 formally known as Skokie Valley Asphalt in  
18 Grayslake that is the subject of these proceedings?

19 A. Yes, I am.

20 Q. And are you familiar with the area  
21 surrounding Skokie Valley Asphalt?

22 A. Yes, I am.

23 Q. How are you familiar with either that  
24 site -- or both the site and surrounding area?

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1 A. I visited those sites back --

2 Q. Do you remember when?

3 A. I know I was out there on the 19th of  
4 April 1995 and possibly I may have been in the area  
5 previous to that.

6 Q. Mr. Klopke, have you inspected sites  
7 where there's been possible oil contamination?

8 A. Yes.

9 Q. How did ERU or OER as it's currently  
10 known handle such complaints?

11           A.       Well, we respond to the complaint to  
12 first verify whether there is or isn't a problem in  
13 the impacted area and then we will, you know, make a  
14 search of the area, the likely potentially  
15 responsible parties, and do as much legwork as we  
16 can to both look visually at the site's and then  
17 also talk to the owners of the property to see if  
18 there's been any type of accidents on the site that  
19 might, you know, may not have been reported but now  
20 is showing up off-site.

21           Q.       Okay. Does any of your efforts  
22 include working with USEPA on these oil spill cases?

23           A.       Yes, it does.

24           Q.       Okay. Why do you call or coordinate

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1 with USEPA in those instances where you do?

2           A.       In certain situations where we're not  
3 able to find a responsible party to pay for the  
4 cleanup, we as a state agency do not have funding to  
5 hire a contractor to go out there and do the  
6 cleanup.

7                       We then call the USEPA who has  
8 that capability, that resource, to be able to hire  
9 somebody in the event that we can't find a person to

10 take responsibility and we also get them out there  
11 for their expertise.

12 Q. And what type of business was Skokie  
13 Valley Asphalt?

14 A. I believe it was an asphalt type -- an  
15 asphalt business or something similar. As the  
16 company name implies, I would think that they were  
17 in the business of --

18 MR. JAWGIEL: Your Honor, I'm going  
19 to object. He's speculating at this point  
20 and I ask that it be struck.

21 HEARING OFFICER SUDMAN: Well, I think  
22 he's answered it.

23 An asphalt company?

24 THE WITNESS: Right.

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1 MR. MURPHY: Thank you.

2 BY MR. MURPHY:

3 Q. Could you describe the area around  
4 Skokie Valley Asphalt, the former Skokie Valley  
5 Asphalt site?

6 A. Well, the Avon Fremont ditch lies to  
7 the east. There's railroad tracks that lye to the  
8 north. A farm field, I believe, surrounded the

9 facility and -- yeah. I recall a farm field  
10 surrounding it at least on the north -- or I mean,  
11 on the east, south, and west sides of the property.

12 Q. Were there any other industries,  
13 factories or gas stations in the area?

14 A. Not that I know of other than Mitch's  
15 Landscaping was to the west.

16 Q. What kind of company was Mitch's  
17 Landscaping?

18 A. Again, from recollection was a  
19 landscaping company that would provide landscaping  
20 services to either subdivisions and personal  
21 landscaping or possibly, you know, larger companies.

22 Q. Now, you mentioned you went to the  
23 site in early 1995?

24 A. Correct.

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1 Q. How soon after arriving at the Avon  
2 drainage ditch in the former Skokie Valley Asphalt  
3 site did you determine what kind of release was  
4 involved?

5 A. Well, I immediately saw the sheen, the  
6 oil sheen on the surface -- the petroleum sheen on  
7 the surface of the Avon Fremont ditch and there was

8 a strong odor of petroleum.

9 Q. Okay. So those two things indicated  
10 to you that it was an oil spill or oil release?

11 A. Correct.

12 Q. And that was based upon your training  
13 and experience?

14 A. Correct.

15 Q. In which direction does the Avon  
16 drainage ditch flow?

17 A. It flows to the north.

18 Q. Okay. Is there a farm field tile  
19 outfall that connects to Avon drainage ditch?

20 A. Yes.

21 Q. And where is that located?

22 A. That is located on the west bank of  
23 the Avon Fremont ditch south of the railroad tracks.

24 Q. Where is that field tile in relation

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1 to the Skokie Valley Asphalt site?

2 A. Due east.

3 Q. Okay. When you inspected the Skokie  
4 Valley Asphalt site in April of '95, who else was  
5 with you that day?

6 A. Ken Savage from our agency and also

7 Betty Lavis from the USEPA.

8 Q. Why were USEPA personnel with you that  
9 day?

10 A. They were contacted by our agency to  
11 assist in dealing with the problem in the Avon  
12 Fremont ditch.

13 Q. You mentioned that the Avon drainage  
14 ditch flows north. Does it flow into Grayslake, the  
15 town?

16 A. It flows -- I believe, it flows  
17 through Grayslake, the town.

18 Q. As opposed to Grayslake, the body of  
19 water?

20 A. Correct.

21 Q. Did you notice anything in the Avon  
22 drainage ditch in that direction downstream from the  
23 field tile?

24 A. I recollect going across a subdivision

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1 street that goes over the Avon Fremont drainage and  
2 I believe -- I recollect seeing and smelling the  
3 diesel fuel at that point.

4 Q. And that was downstream from the field  
5 tile?

6 A. Yes.

7 Q. Did you inspect the area around  
8 Mitch's Green Thumb Nursery?

9 A. I recall visiting Mitch's Green Thumb,  
10 yes.

11 Q. Did you see any oil there?

12 A. No.

13 Q. And could the oil have been coming  
14 from any other areas during your inspection of April  
15 of '95 --

16 MR. JAWGIEL: I'm going to object.

17 MR. MURPHY: Well, can I finish the  
18 question?

19 MR. JAWGIEL: Sure. I'm sorry.

20 Q. -- other than the Skokie Valley  
21 Asphalt site?

22 MR. JAWGIEL: Objection to the  
23 foundation, your Honor.

24 HEARING OFFICER SUDMAN: Well, he did

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1 just testify that he had been to several  
2 other places, correct?

3 MR. JAWGIEL: Several other places  
4 that we have not talked about. He asked him

5 did you see oil at Mitch's Green Thumb  
6 Nursery and he said no, but he also said that  
7 he smelled diesel fuel, so we don't even know  
8 what the substance is in the water.

9 We have multiple substances that  
10 it possibly could be. It hasn't been  
11 established what the substance actually is.

12 HEARING OFFICER SUDMAN: And what was  
13 your question again?

14 MR. MURPHY: My question was could the  
15 oil that he observed in the Avon drainage  
16 ditch have been coming from other areas  
17 during his inspection of April of '95 other  
18 than the Skokie Valley Asphalt site?

19 HEARING OFFICER SUDMAN: I'm going to  
20 allow it.

21 You may answer.

22 THE WITNESS: I did not see any other  
23 responsible parties or could not confirm that  
24 anything else was coming off of other

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1 properties.

2 BY MR. MURPHY:

3 Q. Did you observe anything at the Skokie

4 Valley Asphalt site that suggested to you it was  
5 coming from that site?

6 A. Well, I recall seeing above ground  
7 storage tanks on the property which, you know, not  
8 having -- from afar seeing above ground storage  
9 tanks, and then there's always the possibility as a  
10 responder that a large facility might have  
11 underground storage tanks there that might be a  
12 contributing factor.

13 MR. JAWGIEL: Your Honor, I'm going to  
14 object and ask that that be struck as being  
15 speculative. If a large facility may have it  
16 or not is speculation.

17 MR. MURPHY: He's just giving his  
18 opinion based on his experience.

19 HEARING OFFICER SUDMAN: I agree.  
20 You can give your opinion.

21 BY MR. MURPHY:

22 Q. Mr. Klopke, I'd like to direct your  
23 attention to tab 25 in the binder that you have in  
24 front of you.

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1 A. Yes.

2 Q. Take a moment to look through that.

3  
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(Witness perusing  
the document.)

A. Okay.

Q. Do you recognize it?

A. Yes.

Q. What is it?

A. It's a pol representative sent by the  
United States Environmental Protection Agency.

Q. What is a pol representative?

A. It's a pollution report.

Q. That's an acronym?

A. Short for pollution report.

Q. It was prepared by the USEPA?

A. Correct.

Q. What date does it give?

A. May 3, 1995.

Q. And who is this memo from?

A. I believe it's from -- it reads  
Betty Lavis, USEPA.

Q. And she was the individual that was  
present with you in April of '95 at or near the  
site?

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1 A. Correct.

2 Q. And does it indicate who Betty Lavis  
3 sent this memo to?

4 A. A long list of people, including  
5 Ken Savage and myself, Don Klopke, from the IEPA  
6 ERU, monitoring response unit.

7 Q. Is this a document used in the  
8 ordinary course of business between Illinois EPA and  
9 USEPA when there's an oil spill in a body of water?

10 A. Yes.

11 Q. Is it kept in the ordinary course of  
12 business by Illinois EPA?

13 A. Yes.

14 Q. Is this a true and accurate copy of  
15 that report?

16 A. Yes.

17 Q. Does the report indicate whether USEPA  
18 was successful in determining the source of the  
19 petroleum release into the Avon drainage ditch?

20 A. Yes.

21 Q. Where does it do that?

22 A. Well, under actions taken on page 2,  
23 on April 25, it states that the OSC had planned to  
24 do additional sampling but was met at the site by

1 the owners of SVAC who said they had found a leak  
2 and would address the problem.

3 Q. What does an OSC stand for?

4 A. On-scene coordinator.

5 Q. And what does SVAC stand for?

6 A. Skokie Valley Asphalt Company.

7 Q. Does the report at tab 25 indicate who  
8 the owners and operators of Skokie Valley Asphalt  
9 Company were?

10 A. I believe on the first page on site  
11 background, it indicates Richard and Larry  
12 Frederick, owner/operator.

13 Q. So this report indicates that it was  
14 Larry and Richard Frederick on behalf of Skokie  
15 Valley Asphalt Company who were the individuals --  
16 strike that.

17 So this report indicates that  
18 Larry and Richard Frederick were the individuals on  
19 behalf of Skokie Valley Asphalt Company that dealt  
20 with the regulatory agencies with respect to this  
21 environmental issue?

22 MR. JAWGIEL: Your Honor, I'm going to  
23 object. This person is not the person who  
24 drafted this document. He would have no

1 knowledge of that and, therefore, it is pure  
2 speculation.

3 MR. MURPHY: Absolutely not. It's  
4 a business record. I've laid the foundation  
5 for that and anything --

6 HEARING OFFICER SUDMAN: I agree.  
7 You may answer, if you know.

8 MR. JAWGIEL: Your Honor, he can lay  
9 the foundation for a business record, but if  
10 the person who is testifying didn't draft the  
11 document, they can't interpret the document.  
12 The documents then speak for themselves and  
13 can be admitted into evidence.

14 If there's questionable  
15 interpretation of the document, it's up to  
16 the drafter to clarify it, not speculation on  
17 the part of a witness who did not draft this  
18 particular document.

19 HEARING OFFICER SUDMAN: He can give  
20 his opinion.

21 MR. JAWGIEL: We'll object as not  
22 disclosed pursuant to Supreme Court Rule 213.

23 HEARING OFFICER SUDMAN: Okay.

24 THE WITNESS: Could you repeat the

1 question, please?

2 MR. MURPHY: Sure.

3 BY MR. MURPHY:

4 Q. So Larry Frederick and Richard  
5 Frederick were the individuals on behalf of Skokie  
6 Valley Asphalt Company that dealt with the  
7 regulatory agencies, USEPA, and Illinois EPA with  
8 respect to this environmental issue?

9 MR. JAWGIEL: Same objection, your  
10 Honor, to the same question he asked.

11 HEARING OFFICER SUDMAN: Same ruling.  
12 Overruled.

13 THE WITNESS: Yes.

14 BY MR. MURPHY:

15 Q. Does the report explain the sources of  
16 contamination at the Skokie Valley Asphalt site?

17 A. Well, it notes a leaking underground  
18 storage tank and also the possibility that -- under  
19 actions taken also under May 1, 1995, it notes that  
20 an unregistered leaking underground storage tank as  
21 a possibility of the alleged release -- or the  
22 release.

23 Q. Okay. Directing your attention to  
24 page 3 under key issues, D, what does the report

1 indicate there?

2 MR. JAWGIEL: I'm sorry. Which  
3 section?

4 MR. MURPHY: Section D, page 3.

5 MR. JAWGIEL: Thank you.

6 THE WITNESS: It also not only  
7 mentions the 2000-gallon storage tank but it  
8 also mentions the possibility that there may  
9 be additional product under the property that  
10 might be contributing to the release.

11 BY MR. MURPHY:

12 Q. Product being what?

13 A. Petroleum.

14 Q. From the operations at the site?

15 A. Correct.

16 MR. MURPHY: May I have one moment?

17 HEARING OFFICER SUDMAN: Yes.

18 (Brief pause.)

19 MR. MURPHY: Just a couple more  
20 questions.

21 HEARING OFFICER SUDMAN: Sure.

22 BY MR. MURPHY:

23 Q. Who is Ken Savage?

24 A. He was a partner in the emergency

1 response unit at that time, an employee in the  
2 emergency response unit.

3 Q. And you worked with him?

4 A. Yes.

5 Q. You worked with him on this case?

6 A. Yes.

7 Q. Was he involved in any investigations  
8 of the site apart from you?

9 A. Yes.

10 Q. And when did they occur?

11 A. I believe the file shows some work  
12 done in December and also in February, December of  
13 '94 and February of '95.

14 MR. MURPHY: Nothing further, Madam  
15 Hearing Officer.

16 HEARING OFFICER SUDMAN: Thank you.

17 Mr. Jawgiel?

18 MR. JAWGIEL: Yes. Thank you.

19 C R O S S - E X A M I N A T I O N

20 BY MR. JAWGIEL:

21 Q. Good afternoon, Mr. Klopke.

22 A. Hi.

23 Q. You personally did not conduct any  
24 tests which would definitively locate the source of

1 the substance that was coming out of the farm tile  
2 back in 1995 in the SVA area; is that correct?

3 A. Not that I recall.

4 Q. You didn't personally inspect the  
5 above ground storage tanks that were on the SVA  
6 property when you were out there; is that correct?

7 A. My recollection is we did walk the  
8 property on the 19th.

9 Q. Did you inspect the above ground tanks  
10 that you talked about earlier?

11 A. Not physically.

12 Q. Okay. So you saw that they were there  
13 and you believe they could have been a potential  
14 source of this substance and you didn't go inspect  
15 them; is that correct?

16 A. That's correct.

17 Q. Now, with respect to underground  
18 storage tanks, you had indicated that a facility  
19 like SVA possibly could have had underground storage  
20 tanks; is that correct?

21 A. That's correct.

22 Q. And while you were out at the site,  
23 did you ever go and look around the facility for

24 anything that would be indicative of an underground

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1 storage tank?

2 A. Yes.

3 Q. Did you find any?

4 A. Yes.

5 Q. Did you look inside to see if there

6 was any indication of a leak in those tanks, for

7 example, water leaking in or anything along those

8 lines?

9 A. I don't recall doing that.

10 Q. Did you take a sample of the contents

11 in the underground storage tank?

12 A. I do not recall doing that.

13 Q. Did you match up any sample whatsoever

14 of any material on the Skokie Valley site while you

15 were out there during your investigation and match

16 it to what was found in the drainage ditch?

17 A. Not that I recall.

18 Q. You had indicated that you -- well,

19 let me just ask you, you said that you saw this oily

20 substance on the drainage ditch, was it gasoline?

21 A. No.

22 Q. Was it diesel fuel?

23 A. Possibly.  
24 Q. Okay. Was it heating oil?

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1 A. Possibly.  
2 Q. Was it fertilizer based?  
3 A. No, I can't say that.  
4 Q. You don't know one way or the other?  
5 A. No.  
6 Q. So it could be or it couldn't be; is  
7 that fair enough?  
8 A. Heating oil?  
9 Q. No, fertilizer based.  
10 A. Fertilizer based as far as what?  
11 Q. Well, was it a fertilizer?  
12 A. I don't believe so.  
13 Q. Did you test it for that sampling?  
14 A. No. I just seen the sheen and smelled  
15 the odor.  
16 Q. Okay. So based on your smell it could  
17 have been gasoline; it could have been diesel?  
18 A. I did not say gasoline. I said it  
19 could not be gasoline. It could be either diesel  
20 or, number two, heating fuel which have very similar  
21 characteristics both by odor and sight.

22 Q. Anything else that it could have been  
23 in your experience?

24 A. No.

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1 Q. Did you see any diesel fuel on the SVA  
2 site when you inspected it?

3 A. I do not recall seeing anything on the  
4 19th.

5 Q. Well, at any time that you inspected  
6 the premises, did you see any diesel fuel?

7 A. I don't recall seeing any diesel fuel  
8 to my knowledge on the site that I can recall.

9 Q. When you opened up -- when you saw  
10 these underground storage tanks, did you smell any  
11 diesel smell?

12 A. I did not open the tanks. Typically,  
13 it's not our operating procedure to be opening up  
14 underground storage tanks on a property.

15 Q. Well, I thought it was your  
16 responsibility or at least one of your duties to  
17 determine who the responsible party was?

18 A. Yes.

19 Q. Okay. And in doing so, don't you --  
20 if you go to a place that you believe is the

21 responsible party, wouldn't it be part of your  
22 responsibility to confirm that materials that may be  
23 present on there would be the same materials that  
24 you sampled out of the drainage ditch?

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1           A.       Usually our course of action is to  
2 approach the property owner initially to see if  
3 there's any type of obvious release that hadn't been  
4 reported or may have been spilled or hadn't been  
5 reported yet. We will try to walk the property to  
6 see if there's any visual contamination.

7                       If there are monitoring laws on  
8 the property, we will try to open those up, but a  
9 lot of our work is just trying to get a responsible  
10 party or a potential responsible party to work with  
11 us to try and resolve some off-site impact.

12           Q.       Well, you like to use this phrase  
13 responsible party, but really when you would go out  
14 to a site when you did your investigation, based on  
15 your investigation, you didn't know who the  
16 responsible party was, you just thought SVA was a  
17 potential responsible party; isn't that correct?

18           A.       Yes.

19           Q.       At no point in time did you actually

20 draw the conclusion that they were the responsible  
21 party based on what you saw, tasted, felt, touched,  
22 smelled out on the site; is that correct?

23 A. That's correct.

24 Q. You're relying solely on Ms. Lavis'

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1 statements in her report regarding whether or not  
2 SVA was the responsible party?

3 MR. COHEN: Objection, no time frame  
4 to that question.

5 MR. JAWGIEL: Time frame? He just  
6 testified five minutes ago. What kind of  
7 time frame do I need? He's relying solely on  
8 Ms. Lavis' report, which we talked about two  
9 minutes ago.

10 HEARING OFFICER SUDMAN: What kind of  
11 time frame do you mean?

12 MR. COHEN: At what point in time is  
13 he relying on that as the responsible party?  
14 There's a lot that's happened since the Lavis  
15 report has come out that this witness may  
16 know of to be able to also know who the  
17 responsible party is.

18 HEARING OFFICER SUDMAN: Could you

19           please break it down?

20   BY MR. JAWGIEL:

21           Q.       In the testimony you gave here today,  
22 do you believe SVA was the responsible party based  
23 upon Ms. Lavis' report; isn't that correct?

24           A.       No. I believe there was a report by

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1   Huff and Huff that was sent May 1 to our office  
2   which indicates -- Huff and Huff was their  
3   contractor hired by SVAC and that report states that  
4   a release -- or there was product found on the  
5   property and that they were taking responsibility  
6   for the cleanup in the -- the cleanup of the spill  
7   and also responsible for the spill itself.

8           Q.       Okay. Well, let me ask you -- that  
9   report said that they were taking responsibility for  
10 the spill itself?

11          A.       I believe so.

12          Q.       You believe so?

13          A.       They were. They were taking  
14 responsibility for the drainage ditch and, if I  
15 recall, the spill itself.

16          Q.       Okay. Well, let me ask you this  
17 question: In that report that you saw from Huff and

18 Huff, did you see any sort of chemical analysis that  
19 would match what was in the drainage ditch and what  
20 was on the facility itself?

21 A. Not that I recall.

22 Q. Okay. Other than the report from Huff  
23 and Huff and Ms. Lavis' report, is there any other  
24 basis for your opinion here today that SVA was the

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1 facility responsible for the discharge?

2 A. There was significant work done by the  
3 consultant and the release stopped soon after that  
4 work was performed on the property, the release to  
5 the creek. There was no -- our file did not  
6 indicate any further complaints of diesel fuel in  
7 the creek after work was performed on the property  
8 and off the property, I believe, by Huff and Huff,  
9 and that report never indicated any type of -- any  
10 type of upstream responsible party that was  
11 indicated by their investigation.

12 Q. Well, did Huff and Huff actually do an  
13 area investigation in that report?

14 A. Not that I recall.

15 Q. Okay. So you don't know whether or  
16 not they looked for other alternative sites or not;

17 is that correct?

18 A. I believe they did some off-site  
19 excavation and that off-site excavation indicated --  
20 did not indicate anything upstream.

21 Q. Okay. Let me ask you this question:  
22 How many drain tiles fed into this farm tile in that  
23 area?

24 A. I don't recall.

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1 Q. Did you do any research to find out?

2 A. Not that I recall.

3 Q. Now, are you familiar with pulling  
4 permits given that you have a civil engineering  
5 background, pulling permits in order to do  
6 excavation and drain tile installation in a village?

7 A. Repeat the question, please.

8 Q. Sure.

9 Given that you have a background  
10 in civil engineering, are you familiar with the  
11 process of acquiring a permit to install drain tiles  
12 in a particular city, town or village?

13 A. Not that I recall.

14 Q. Did you do any investigation by going  
15 to the village hall to determine whether or not they

16 had a schematic or permits or anything that would  
17 indicate to you that there were contributory drain  
18 tiles into this farm tile that were not SVA?

19 A. Not that I recall.

20 Q. So based on your investigation,  
21 setting aside the reports from Ms. Lavis and Huff  
22 and Huff, it was inconclusive whether or not SVA was  
23 a responsible party?

24 MR. COHEN: I object to the form of

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1 that question.

2 THE WITNESS: I would say it was  
3 conclusive --

4 HEARING OFFICER SUDMAN: Sir --

5 MR. COHEN: I object to the form of  
6 that question.

7 THE WITNESS: Sorry.

8 HEARING OFFICER SUDMAN: Would you  
9 rephrase the question, please?

10 MR. JAWGIEL: Sure.

11 BY MR. JAWGIEL:

12 Q. Without seeing the reports from Huff  
13 and Huff that you had indicated and without seeing  
14 the USEPA but based solely on your investigation of

15 this site, Skokie Valley was only a potential source  
16 for the substance; isn't that correct?

17 A. Well --

18 MR. COHEN: Would you repeat the  
19 question?

20 MR. JAWGIEL: Sure.

21 MR. COHEN: Excuse me, your Honor. If  
22 I may, I think if he limits that question to  
23 the date he was out there, I think it may be  
24 more understandable; it's just a suggestion.

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1 HEARING OFFICER SUDMAN: Well, I don't  
2 know that it's necessarily a date-dependent  
3 question.

4 Are you just asking him --

5 MR. JAWGIEL: I'm just asking if he  
6 set aside this report --

7 HEARING OFFICER SUDMAN: On the basis  
8 of his investigation.

9 BY MR. JAWGIEL:

10 Q. Based on your investigation alone,  
11 Skokie Valley was only a potential source for this  
12 contamination?

13 MR. COHEN: Then I have to object to

14 the form of the question because you're  
15 asking this witness to set aside portions of  
16 what is part of his investigation, that being  
17 the USEPA report, that they did receive that  
18 they participated in and the consultant's  
19 report that they did receive and relied on.

20 So if you limit it to time before  
21 they get there, then I think you can ask that  
22 question. But I don't think you can ask him to  
23 erase from his mind --

24 HEARING OFFICER SUDMAN: Yeah, I think

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1 you need to be more specific on what you mean  
2 by his --

3 MR. JAWGIEL: I did. I indicated to  
4 him setting aside the report from  
5 Ms. Lavis --

6 HEARING OFFICER SUDMAN: But what does  
7 that include?

8 MR. JAWGIEL: Well, he indicated there  
9 was this report, which is now Exhibit 25.

10 HEARING OFFICER SUDMAN: Yes.

11 MR. JAWGIEL: I'm asking him to set  
12 that aside. And he also identified a

13 document -- or report I should say from  
14 Huff and Huff, which I'm asking him to set  
15 aside as well, and I'm saying based on -- if  
16 we set those two documents aside based on  
17 your investigation, was Skokie Valley --

18 HEARING OFFICER SUDMAN: On the date  
19 that he talked about?

20 MR. JAWGIEL: Well, yeah.

21 HEARING OFFICER SUDMAN: Okay.

22 BY MR. JAWGIEL:

23 Q. When you were out on the site, Skokie  
24 Valley was only a potential source for the

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1 contaminants on the date that you were out  
2 investigating; is that correct?

3 A. I don't want to do this to you but  
4 could you please just give me that question one more  
5 time?

6 Q. Sure.

7 When you concluded your  
8 investigation while you were still on the site that  
9 day -- I think it was in April of 1995; is that  
10 right?

11 A. Yes.

12 Q. You were out there in April of 1995.  
13 And when you concluded your investigation of the  
14 site, was Skokie Valley only a potential source for  
15 this contamination?

16 A. Yes.

17 Q. What other potential sources did you  
18 list in your report for this contamination?

19 A. I don't believe I generated a report.

20 Q. All right. What other sources of  
21 contamination -- potential sources of this  
22 contamination were there after you completed your  
23 examination?

24 A. As I mentioned earlier, the only

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1 property that was near the area was Mitch's  
2 Landscape.

3 Q. Did you go to the farm to see if the  
4 farmland or the farm in that area had any drain  
5 tiles?

6 A. No -- well, I went to the property  
7 but, as you know, drain tiles aren't really  
8 apparent. I mean, they're very --

9 Q. My question was did you inspect any  
10 drain tiles that may have been on the farm?

11 A. No, not that I recall.

12 Q. Are you familiar that diesel fuel may  
13 be on a farm for equipment, has it been your  
14 experience?

15 A. There's a possibility.

16 Q. So the farm area -- you walked on the  
17 property, but you didn't really -- did you talk to  
18 anybody?

19 A. Well, I believe -- I do not recall  
20 when I drove the perimeter of the property seeing  
21 anything that would lead me to believe that there  
22 was storage or the use of diesel fuel in the area.  
23 Many times there are above ground storage tanks, but  
24 I do not recall seeing those.

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1 Q. When you said you drove the permitter  
2 of the property, you're talking about the SVA  
3 property?

4 A. No. The area. I mean, as I  
5 mentioned --

6 Q. Well, how far did you drive?

7 A. Probably up the next road down, up the  
8 street.

9 Q. Which would be what?

10           A.       South.

11           Q.       Which road?

12           A.       I don't recall.

13           Q.       How far was that from where the Skokie  
14 Valley site was located?

15           A.       I don't recall.

16           Q.       Are you aware of a car dealership  
17 being in that area, the Skokie Valley area?

18           A.       I do not recall that.

19           Q.       Did you look to see if there were any  
20 other potential sources of this oily substance other  
21 than Mitch's Green Thumb Nursery and Skokie Valley?

22           A.       At the time of that inspection, from  
23 what I recall, those were the only two that stood  
24 out in my -- from my recollection.

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1           Q.       Okay. Do you see on Exhibit 25,  
2 page 3, under Section D -- I think you were referred  
3 to that as well by Mr. Murphy. Do you see where it  
4 says: EPA must continue the investigation of the  
5 source of the release.

6                       A 2000-gallon storage tank leak is  
7 probably not a complete explanation for the  
8 continued release. Do you see that there?

9 A. Yes, sir.

10 Q. Now, does that indicate to you, sir,  
11 that there were more than one source of this  
12 potential contaminant?

13 A. Could you repeat it, please?

14 Q. Sure.

15 Does that indicate to you in your  
16 opinion that there would be more than one source of  
17 this contamination?

18 A. They are saying that there may be more  
19 than one source on the property.

20 Q. Okay. Did you or --

21 A. That there may be one more source on  
22 the property.

23 Q. Did you or the Illinois EPA as far as  
24 you're aware, based on the reports you have in your

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1 file, ever go out to examine the 2000-gallon storage  
2 tank?

3 A. I don't recall doing that, but I  
4 believe the report stated that it was referred to  
5 the leaking underground storage tank program who  
6 typically will follow up on leaking underground  
7 storage tanks.

8           Q.       Just so I could understand your  
9 testimony, is it your opinion that it was this  
10 leaking underground storage tank that was the source  
11 of the contamination in the Avon drainage ditch  
12 based on your entire investigation?

13           A.       I don't know if I can answer that  
14 other than it seemed to stop once activity was  
15 performed on the property by their consultants.

16           Q.       Okay. So you don't know whether or  
17 not what they did on the property at Skokie Valley  
18 stopped the leak or not?

19           A.       Other than it stopped showing up in  
20 the creek after the fact.

21           Q.       But you don't know? Do you know the  
22 time frame? When did it stop showing up in the  
23 creek?

24           A.       I don't recall. I don't know.

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1           Q.       You don't know?

2           A.       No.

3           Q.       Okay. And when did they start  
4 remediating things actually on the site at Skokie  
5 Valley in your opinion?

6           A.       Sometime in late April.

7 Q. Late April?

8 A. Yes.

9 Q. What did they do?

10 A. I believe they constructed some --

11 based on the Huff and Huff report, they created some

12 recovery sumps on the property, used a trench that

13 was excavated to try and find the source of the

14 release on the property, and then controlled the

15 material that was on -- or tried to control the

16 material on the property by using those two points

17 as collection sumps.

18 Q. Okay. Do you have that report with

19 you?

20 A. Yes -- not with me here.

21 Q. You don't have that report with you?

22 A. No.

23 Q. My question then to you, sir, is your

24 only basis that Skokie Valley then was a source --

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1 or actually one of the bases really that Skokie

2 Valley was the source was that there was some action

3 being taken on the property itself and the discharge

4 ended but at some time that you don't know?

5 A. Yes.

6           Q.       So you don't know whether or not the  
7 work that was being done on the Skokie Valley  
8 property was contemporaneous to the actual stopping  
9 of the oil source, is that correct, because you  
10 don't know when the oil source stopped; is that  
11 correct?

12           A.       One more time.

13           Q.       Sure.

14                        You had testified that you don't  
15 know when the oil source stopped, so you don't know  
16 whether or not the action that was taken on the  
17 premises itself was contemporaneous to the oil  
18 stopping?

19                       MR. COHEN: I'm going to object to the  
20 use of the word oil source. If he's  
21 referring to oil flow from the drain tile,  
22 that's one thing that we can talk about in  
23 the Avon drainage ditch. In terms of oil  
24 source, it's a totally ambiguous term that

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1           we're not talking about yet in this case.

2                       HEARING OFFICER SUDMAN: Would you  
3 like to clarify that term?

4 BY MR. JAWGIEL:

5 Q. Well, sir, you don't know whether or  
6 not the actions that were being taken on the SVA  
7 site actually in fact stopped the contamination of  
8 the Avon drainage ditch; is that correct?

9 A. Well, the procedures that were being  
10 done out there are typical to be used on a piece of  
11 property that's had a release to control the source  
12 and protect the downstream receptor.

13 MR. JAWGIEL: I'm going to object.  
14 It's nonresponsive to the question and I ask  
15 that it be struck. I asked him very  
16 specifically you do not know whether or not  
17 in fact the actions taken on the site  
18 actually stopped the leak.

19 HEARING OFFICER SUDMAN: Well, I'm not  
20 going to strike the answer but I would like  
21 you to elaborate as to whether that's a yes,  
22 no or you don't know.

23 THE WITNESS: I would say I don't know  
24 whether they were entirely responsible for

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1 stopping the release to Avon Fremont ditch.

2 HEARING OFFICER SUDMAN: Thank you.

3 THE WITNESS: But it did stop.

4 BY MR. JAWGIEL:

5 Q. Okay. When you say you don't know  
6 that they were entirely responsible, then there's  
7 potentially other sources; is that correct?

8 A. Yes.

9 Q. Sir, what do you base your opinion on  
10 that the actions taken by Skokie Valley on its site  
11 in part caused the contamination to the Avon  
12 drainage ditch to stop?

13 A. Experience in dealing with leaking  
14 underground storage tanks on an emergency basis.

15 Q. Okay. So in your opinion, the source  
16 of the oil would have been the leaking underground  
17 storage tank found on Skokie Valley property; is  
18 that correct?

19 A. No. I believe I said that that's how  
20 I've learned how to deal with problems that are  
21 moving off-site through working as an example with  
22 leaking underground storage tanks.

23 Q. Did you do any follow-up investigation  
24 of either this drain tile or the underground storage

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1 tank?

2 A. Not that I recall.

3 Q. Do you know if the Illinois EPA did  
4 any follow-up with respect to the underground tank  
5 or this drain tile you were referring to?

6 MR. MURPHY: Objection, Madam Hearing  
7 Officer, cumulative. We already got  
8 testimony that the site was inspected in  
9 December of '97 by a different inspector.

10 MR. JAWGIEL: I'm just asking if he  
11 was aware of it.

12 HEARING OFFICER SUDMAN: You can  
13 answer.

14 THE WITNESS: Not that I'm aware.

15 BY MR. JAWGIEL:

16 Q. Did you request that anyone follow up  
17 with respect to the underground storage tank and the  
18 drain tile from the Illinois EPA?

19 A. I don't recall about the underground  
20 storage tank as far as follow-up.

21 Q. Were you deferring to the USEPA as far  
22 as remediating this site?

23 A. Many times we defer to the USEPA to  
24 take the lead on finding out on a site who is the

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1 responsible party and then --

2                   MR. JAWGIEL: Your Honor, I'm going to  
3 ask that the answer be stricken from the  
4 record. I'm about this specific incident in  
5 Skokie Valley, did they allow USEPA to take  
6 over management of the remediation of this  
7 site.

8                   HEARING OFFICER SUDMAN: Yes.  
9 Please --

10                  MR. JAWGIEL: I'm not talking about  
11 his policies and procedures and what they do  
12 in the normal course. I want to know with  
13 this particular situation, was it USEPA that  
14 was taking over the remediation of the Avon  
15 drainage ditch.

16                  MR. COHEN: What time frame are you  
17 talking about? Object to the form of the  
18 question. The witness is doing his best to  
19 answer his ambiguous questions but without a  
20 time frame, he can't do it.

21                  HEARING OFFICER SUDMAN: Would a time  
22 frame help you answer the question?

23                  THE WITNESS: We could try.

24

1 BY MR. JAWGIEL:

2 Q. Subsequent to your investigation --  
3 which I believe was only one day, wasn't it?

4 A. That I recall, yes.

5 Q. Okay, so you were out at this. You  
6 were not familiar with this site other than the day  
7 you went out there; is that right?

8 A. I believe I was out there previous,  
9 but there's nothing in the record that would prove  
10 that I was out there.

11 Q. Well, when was that?

12 A. I don't know. I can't recall.

13 Q. Okay. Why were you out there?

14 A. For responding to an oil spill.

15 Q. Where?

16 A. Avon Fremont ditch.

17 Q. Was it north of this spill or south of  
18 the spill?

19 MR. MURPHY: Objection.

20 BY MR. JAWGIEL:

21 Q. When you were first on the site, did  
22 you believe -- responding to an oil spill, was it  
23 north of this spill or south of the spill?

24 A. If I could explain, in my memory, I

1 think I was out there more than once, but in fact I  
2 may have only been out there on the 19th when it was  
3 noted in Betty Lavis' report.

4 Q. Okay. So as we sit here today, you  
5 have no recollection specifically of being out there  
6 but it may or may not have happened?

7 A. That's correct.

8 Q. Now, other than that one day that you  
9 were out there doing your investigation on April  
10 19th of 1995, after that period of time, did you  
11 have the USEPA -- or did the USEPA take over the  
12 remediation of this spill?

13 A. I believe -- well, in the file it  
14 indicates that there is going to be a joint  
15 follow-up by both the USEPA, and I believe the Huff  
16 and Huff report states that they would contact the  
17 leaking underground storage tank program.

18 Q. Well, I'm not asking what was in the  
19 memo. I'm asking you what practically happened.  
20 From a practical standpoint you have not been able  
21 to tell us anything that was done until 1997, I  
22 believe, as far as going out to the site by the  
23 Illinois EPA.

24 My question is very simple.

1 Between your visit of April 19, 1995 and the visit  
2 back in December of 1997, did the Illinois EPA do  
3 anything to manage the remediation of the spill in  
4 the Avon drainage ditch?

5 A. Not to my direct knowledge.

6 Q. And in your experience, sir, given  
7 that gap of period of time, has it been your  
8 experience then that the Illinois EPA was deferring  
9 to the USEPA with respect to remediation of this  
10 site?

11 A. There are other programs within the  
12 agency that might be involved in a situation like  
13 this.

14 Q. Are you aware of any other programs in  
15 your agency that were involved in this situation?

16 A. Yes.

17 Q. Which?

18 A. The leaking underground storage tank  
19 program.

20 Q. Okay. Have you reviewed any reports  
21 from the leaking underground storage program?

22 A. No, I haven't.

23 Q. Do you know whether or not after the  
24 storage tank was taken out that there was any

1 testing done of the soil around the storage tank to  
2 determine the content?

3 A. No, I do not.

4 Q. Do you know whether or not -- what was  
5 the extent of the oil present in this leaking oil  
6 storage tank or whether or not it was determined  
7 whether or not it was the source of the actual leak  
8 after the tank was taken out?

9 MR. COHEN: Object to the form of the  
10 question.

11 HEARING OFFICER SUDMAN: I don't  
12 recall.

13 MR. COHEN: Excuse me.

14 THE WITNESS: I'm sorry.

15 HEARING OFFICER SUDMAN: When there's  
16 an objection pending, Mr. Klopke, you can  
17 just hang on for a second.

18 THE WITNESS: I'm sorry.

19 HEARING OFFICER SUDMAN: What exactly  
20 do you object to?

21 MR. COHEN: At least compound. I  
22 couldn't count all the different ones.

23 MR. JAWGIEL: Well, if he can't count  
24 them, then he can't bring them.

1 (Laughter.)

2 I'll rephrase the question.

3 HEARING OFFICER SUDMAN: Okay.

4 BY MR. JAWGIEL:

5 Q. Are you aware that after the -- of any  
6 conclusion whether or not the leaking storage tank  
7 was the actual source of contamination in the Avon  
8 drainage ditch after the tank was taken out and the  
9 area around the tank was analyzed?

10 A. I do not have any direct knowledge of  
11 that.

12 Q. So your knowledge is based upon --  
13 what was the date of the report from Huff and Huff?

14 A. May 1.

15 Q. Of what year?

16 A. 1995.

17 Q. Okay. And the report we have here in  
18 Exhibit 25 was May 3, 1995. So your extent of what  
19 was going on in this site ended basically in May of  
20 1995; is that correct?

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

22 Q. Okay. So you don't know what may or  
23 may not have happened after that time as far as what  
24 tests were taken, what conclusions were made, what

1 was the determination as far as what was present on  
2 the SVA site; is that correct?

3 A. That's correct.

4 Q. Are you aware of a landfill that was  
5 in this area?

6 A. No, I'm not aware.

7 Q. So you don't know one way or the  
8 other; is that correct?

9 A. I don't recall visiting a landfill  
10 back then.

11 Q. Whether you visited or not, you don't  
12 know if there was one present?

13 A. That's correct.

14 MR. MURPHY: Madam Hearing Officer,  
15 I'm going to ask -- I'm going to show an  
16 objection that if counsel does not perfect  
17 his impeachment on this issue, he cannot  
18 simply interject facts that may or might have  
19 existed.

20 If he's going to be talking about  
21 this landfill and it's going to be relevant,  
22 he's got to later on show that it existed,  
23 otherwise, I'm going to move to strike this

24 line of questioning.

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1 MR. JAWGIEL: Well, isn't that sort of  
2 putting the cart before the horse, your  
3 Honor? If he's going to move to strike it  
4 but I tie it in later into my case, it's  
5 going to be very difficult.

6 So yes, I will tie it in my case.  
7 I will ask people who do have knowledge of  
8 what is actually in this area but at this  
9 point in time, it's cross-examination. I'm  
10 given a liberal birth.

11 HEARING OFFICER SUDMAN: Okay. Your  
12 objection is noted. I'll allow you to ask it  
13 for now.

14 BY MR. JAWGIEL:

15 Q. Has it been your experience, sir, that  
16 farms have heating oil on their premises?

17 A. Yes.

18 Q. Has it been your experience that farms  
19 have fertilizer on their premises?

20 A. Yes.

21 Q. Has it been your experience that farms  
22 generally have diesel fuel on their premises?

23 A. Yes.

24 Q. Did you check the history of the use

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1 of the SVA site?

2 A. I don't recall doing that.

3 Q. Are you aware of any prior violations  
4 by SVA of any environment laws?

5 A. Not directly.

6 Q. Are you aware of any economic gain SVA  
7 in your opinion would have had by having oil  
8 discharge in the manner in which you indicated  
9 either through a leaky underground storage tank or  
10 this drain tile?

11 MR. MURPHY: Madam Hearing Officer,  
12 I've got an objection. This is beyond the  
13 scope of direct, beyond the scope of his  
14 expertise, and this is not the witness for  
15 this.

16 MR. JAWGIEL: If he talks about  
17 responsible parties I want to flesh out what  
18 responsible parties are. A responsible party  
19 would be a party that undertook something and  
20 part of this claim is that they have some  
21 sort of economic gain by doing so.

22 HEARING OFFICER SUDMAN: Would you  
23 repeat the question?  
24 MR. JAWGIEL: Sure.

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1 BY MR. JAWGIEL:

2 Q. Are you aware of any economic gain  
3 Skokie Valley Asphalt would have gained or would  
4 have had by allowing or having fuel -- strike the  
5 question.

6 Are you aware of any economic gain  
7 Skokie Valley Asphalt would have had by having a  
8 leaky underground storage tank or a drain tile with  
9 oil in it?

10 HEARING OFFICER SUDMAN: To address  
11 your objection, I'm going to -- I agree this  
12 is probably not within his scope of  
13 expertise, but he is a professional. I'm  
14 going to allow him to answer it and the Board  
15 can weigh -- I think this goes to weight  
16 rather than admissibility.

17 So please answer the question.

18 THE WITNESS: As far as it leaking out  
19 of the tank, if there's a cost associated  
20 with repairing that tank, there might be some

21 benefit to allowing it to drain, but that  
22 would be the only economic benefit I could  
23 see.  
24

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1 BY MR. JAWGIEL:

2 Q. Well, with respect to allowing the  
3 tank to drain, isn't it true that if the tank is  
4 leaking, you've got to refill it faster in your  
5 experience?

6 A. It depends on how fast the release is  
7 and what the cost is in buying the product versus  
8 replacing the tank to hold it.

9 Q. Do you have any information that  
10 Skokie Valley at the time of your investigation on  
11 April 19, 1995 actually knew that its tank was  
12 leaking?

13 A. No.

14 Q. Are you aware of any report that makes  
15 the conclusion that above ground storage tanks were  
16 a source of the actual contamination into the Avon  
17 drainage ditch?

18 A. No.

19 Q. When you went on Mitch's Green Thumb

20 Landscaping facility, was this a facility that had  
21 trucks and equipment where they would use gasoline,  
22 oil, diesel when you were there that you could see?

23 A. I believe I recall seeing a typical  
24 landscaping operation which would have vehicles

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1 there.

2 Q. Did you inquire or investigate whether  
3 or not they had underground storage tanks with any  
4 sort of the oils?

5 A. That, I don't recall.

6 Q. Are you aware of any of the substances  
7 that you saw in the Avon drainage ditch at the time  
8 of your investigation of April 19, 1995 actually  
9 making their way into the  
10 Third Lake area?

11 A. Other than the drainage ditch, I did  
12 not inspect Third Lake at that time that I recall.

13 MR. JAWGIEL: Okay. That's all I  
14 have. Thank you, sir.

15 HEARING OFFICER SUDMAN: Mr. Murphy,  
16 any redirect?

17 MR. MURPHY: Just a few.

18 R E D I R E C T - E X A M I N A T I O N

19 BY MR. MURPHY:

20 Q. You testified that Skokie Valley  
21 Asphalt Company was an asphalt company, correct?

22 A. Correct.

23 Q. To your knowledge, did they use trucks  
24 as part of their operations?

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1 MR. JAWGIEL: Your Honor, that goes  
2 beyond the scope of my cross-examination.

3 MR. MURPHY: It does not. I'm trying  
4 to tie in Mitch's Green Thumb with the trucks  
5 that are on that site.

6 MR. JAWGIEL: I did not go into the  
7 actual operation of Skokie Valley Asphalt at  
8 all in my cross-examination. I did not ask  
9 him what Skokie Valley did, what sort of  
10 equipment they used, anything along those  
11 lines.

12 HEARING OFFICER SUDMAN: I know that,  
13 but you did ask him about the presence of  
14 trucks nearby.

15 MR. JAWGIEL: The presence of trucks  
16 on a different area has nothing to do with  
17 this question. He's asking the use of those

18 types of vehicles in Skokie Valley and I  
19 didn't go into that area. He also went into  
20 the area of what was present in other  
21 adjoining properties, so I was just following  
22 up on that line of questioning.

23 MR. MURPHY: I'm just trying to  
24 distinguish contamination coming from

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1 different sites than from this site. And if  
2 the substance is diesel fuel, trucks being  
3 operated on Skokie Valley are just as  
4 relevant as trucks operating in Mitch's  
5 Green Thumb.

6 HEARING OFFICER SUDMAN: I agree. He  
7 may answer the question.

8 THE WITNESS: Could you repeat it?

9 MR. MURPHY: Sure.

10 BY MR. MURPHY:

11 Q. Did Skokie Valley Asphalt Company use  
12 commercial, industrial grade trucks as part of their  
13 operation --

14 MR. JAWGIEL: I'm going to object  
15 to -- without foundation and a time frame.

16 BY MR. MURPHY:

17 Q. -- to your knowledge?  
18 A. Yes.  
19 Q. Mr. Klopke, is it your experience that  
20 people or companies that are not truly responsible  
21 for the release, number one, say that they found a  
22 leaking underground storage tank on their property  
23 and then take responsibility to address the  
24 environmental problems caused by that release?

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1 MR. JAWGIEL: Your Honor, objection.  
2 That goes beyond the scope of my direct  
3 examination. There has to be a foundation  
4 laid.  
5 MR. MURPHY: He talked on and on about  
6 what significance of what happened or what  
7 was documented in tab 25, the USEPA report,  
8 and this runs in the same direction. This is  
9 taken right from that report.  
10 HEARING OFFICER SUDMAN: I agree. The  
11 witness may answer.  
12 THE WITNESS: Repeat the question,  
13 please.  
14 MR. MURPHY: Sure. I'll do it slowly.  
15 MR. JAWGIEL: If you could just note

16 my objection for the record.

17 HEARING OFFICER SUDMAN: Your

18 objection is noted, sir. Thank you.

19 BY MR. MURPHY:

20 Q. Is it your experience that people or  
21 companies that are not truly responsible for the  
22 release say to the regulatory agencies that they  
23 found a leaking underground storage tank on the site  
24 and then take responsibility for whatever

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1 environmental problems are caused by that release?

2 A. No.

3 MR. MURPHY: Nothing further.

4 R E C R O S S - E X A M I N A T I O N

5 BY MR. JAWGIEL:

6 Q. Sir, based on your investigation, are  
7 you aware of any environmental impact from the  
8 discharge into the Avon drainage ditch?

9 MR. MURPHY: Madam Hearing Officer, I  
10 have an objection as to relevance. There  
11 is -- environmental impact is not a part of  
12 this case. It is just simply not a part of  
13 this case.

14 Now they can try to make it that

15 way and they have tried in the past, but all  
16 that matters is that there was a discharge  
17 into the waters of the State of Illinois that  
18 caused, threatened or allowed water  
19 pollution, not whether there was an impact.

20 MR. JAWGIEL: Your Honor, it goes to  
21 42H-A. It goes to the gravity and duration  
22 of the impact -- of the offense.

23 HEARING OFFICER SUDMAN: And which  
24 line of questioning for his redirect does it

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1 go to?

2 MR. JAWGIEL: He said take  
3 responsibility for damaging the environment  
4 and in his question -- in the last question  
5 that he asked he said, has it been your  
6 experience that people who have a -- don't  
7 have a leaky storage tank and don't take  
8 responsibility for cleaning up the  
9 environment.

10 HEARING OFFICER SUDMAN: And what was  
11 your question again?

12 MR. JAWGIEL: My question is was there  
13 any environmental impact from the spill into

14 the Avon drainage ditch.

15 MR. MURPHY: Can the record also show  
16 that I do object?

17 HEARING OFFICER SUDMAN: Yes. The  
18 record will show that you object.

19 You may give your professional  
20 opinion on that if you know.

21 THE WITNESS: Well, the sheen on the  
22 body of water in itself is a violation of the  
23 Act -- I think, it's 12A. There's also the  
24 odor problem which has -- you know, which is

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1 a possibility of another other violation.

2 Material can impact, you know,  
3 banks and soils downstream and those are the  
4 only impacts I can think of.

5 BY MR. JAWGIEL:

6 Q. But my question is, was there actually  
7 an environmental impact from this spill, not what it  
8 could or couldn't have done or possibly have done or  
9 anything along those lines? My question is very  
10 specific. Was there actually an environmental  
11 impact with respect to this spill?

12 MR. MURPHY: Objection, vague and

13 outside the scope.

14 MR. JAWGIEL: I don't think it's vague  
15 at all. I'm trying to get a clarification  
16 and an answer to my question.

17 HEARING OFFICER SUDMAN: Well, I think  
18 he just answered. I mean, he said there was  
19 sheen and odor. I don't know what more  
20 you're fishing for. I think he's answered  
21 it.

22 MR. JAWGIEL: I'm really not fishing  
23 for anything. What I'm really asking him to  
24 do is answer my question. He said, well,

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1 there could have been. I want to know in his  
2 investigation did he come to any conclusion  
3 based on his position that there was an  
4 environmental impact from this particular  
5 contamination; that's all I'm asking. It's a  
6 very simple question.

7 HEARING OFFICER SUDMAN: Okay. Would  
8 you please repeat your answer? I thought you  
9 had answered it.

10 THE WITNESS: I would say yes, the  
11 impact is the sheen and the odor.

12 BY MR. JAWGIEL:

13 Q. Okay. Nothing else?

14 A. Not that I'm aware of.

15 MR. JAWGIEL: Okay. That's all.

16 Thank you.

17 HEARING OFFICER SUDMAN: Anything  
18 further for you, Mr. Murphy?

19 MR. MURPHY: No.

20 HEARING OFFICER SUDMAN: Are we done  
21 with this witness?

22 MR. COHEN: Yes.

23 HEARING OFFICER SUDMAN: Okay. Thank  
24 you, Mr. Klopke, you may step down.

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1 (Witness excused.)

2 MR. COHEN: Can we go off the record?

3 HEARING OFFICER SUDMAN: Yes. Let's  
4 go off the record.

5 THE REPORTER: Okay.

6 (Whereupon, a discussion  
7 was had off the record.)

8 HEARING OFFICER SUDMAN: Okay. We'll  
9 go back on the record now and the People may  
10 call their next witness.

11 MR. COHEN: Your Honor, at this time,  
12 the People would call Richard Frederick.

13 HEARING OFFICER SUDMAN: Would the  
14 court reporter please swear in the witness?

15 THE REPORTER: Sure.

16 (Witness sworn.)

17 WHEREUPON:

18 RICHARD JOHN FREDERICK  
19 called as a witness herein, having been first duly  
20 sworn, deposeth and saith as follows:

21 D I R E C T E X A M I N A T I O N

22 BY MR. COHEN:

23 Q. Sir, would you please state you full  
24 name and spell your last name?

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1 A. Richard John Frederick,  
2 F-R-E-D-E-R-I-C-K.

3 Q. Mr. Frederick, what's your position  
4 with Skokie Valley Asphalt Company, Incorporated?

5 A. Vice president in charge of  
6 construction.

7 Q. Were you part owner of the business?

8 A. Yes.

9 Q. What percent of the business did you

10 own?

11 A. Fifty percent.

12 Q. Who owned the other 50 percent?

13 A. My brother Larry.

14 Q. What was his position or title?

15 A. He was the president.

16 Q. When Skokie Valley Asphalt was in  
17 business, did you and your brother have exclusive  
18 control over the business?

19 MR. JAWGIEL: Your Honor, I'm going to  
20 object, legal conclusion. That's for a legal  
21 conclusion, exclusive control. First of all,  
22 form of the question.

23 How can both of them have  
24 exclusive control? Exclusive in and of

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1 itself means individual. But along with  
2 that, it asks for a legal conclusion.

3 HEARING OFFICER SUDMAN: Would you  
4 like to rephrase the question?

5 BY MR. COHEN:

6 Q. Were you and your brother in charge of  
7 the whole operation?

8 MR. JAWGIEL: Again, I'm going to

9 object.

10 HEARING OFFICER SUDMAN: I'm going to  
11 allow it. I think it's fine.

12 THE WITNESS: Along with other foremen  
13 and superintendents.

14 BY MR. COHEN:

15 Q. What type of business was Skokie  
16 Valley Asphalt?

17 A. An asphalt paving contractor.

18 Q. Where was your business located?

19 A. Grayslake was the main office and we  
20 had a plant out in McHenry, Illinois.

21 Q. What was the address of the Grayslake  
22 location?

23 A. 768 South Lake Street.

24 Q. And that's in Lake County, Illinois,

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1 correct?

2 A. Yes.

3 Q. What did you do at the Grayslake  
4 location?

5 A. We had our office, our estimating --  
6 you know, the office and all the people that did the  
7 billing and a maintenance garage to work on various

8 equipment and trucks and we kept some asphalt  
9 liquid, asphalt primer coats and a couple of tanks  
10 there.

11 Q. Is that also where you had dispatched  
12 the trucks from?

13 A. Yes.

14 Q. Did you also storage some trucks at  
15 that facility?

16 A. Yeah, trucks and equipment.

17 Q. How long was Skokie Valley Asphalt at  
18 the Grayslake location?

19 A. I think since 1978.

20 Q. And was there a business at that same  
21 location before Skokie Valley Asphalt?

22 A. Yes, sir.

23 Q. What business was that?

24 A. It was another asphalt company.

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1 Q. Is that Libertyville Asphalt?

2 A. Yes.

3 Q. Who owned that business?

4 A. My parents.

5 Q. And did you work for them while it was  
6 Libertyville Asphalt?

7 A. For a while, yes.

8 Q. Did you ever make asphalt at the  
9 location in Grayslake?

10 A. Yes. We had an asphalt plant there.

11 Q. Do you recall when you stopped making  
12 asphalt at the Grayslake location?

13 A. 1981.

14 Q. What were your responsibilities as  
15 vice president in running Skokie Valley Asphalt?

16 A. I helped with estimating and getting  
17 the work, you know, completed, dealing with various  
18 superintendents and foremen to get jobs done.

19 Q. Now, when you're talking about these  
20 jobs, these are jobs, off-site road construction  
21 jobs?

22 A. Right, parking lots, road  
23 construction.

24 Q. Your primary function was construction

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1 management, is that a good way to say it?

2 A. Yes.

3 Q. And your responsibilities included  
4 personnel, equipment and materials, scheduling and  
5 budgeting for that type of work, correct?

6 A. Right.

7 Q. You also were involved in the hiring  
8 and control of all the employees and you reviewed  
9 and approved the timecards, union contracts, and had  
10 personnel relation issues, correct?

11 A. Right, but not only employees. In  
12 fact, me and my brother share that -- we shared that  
13 duty.

14 Q. You also had the responsibility for  
15 all the equipment matters, purchasing and  
16 maintaining the equipment, daily review of equipment  
17 matters with outside maintenance shops?

18 A. Right.

19 Q. Your duties also included scheduling  
20 of all jobs, employees, and subcontractors?

21 A. Some. Some of that was along with  
22 other estimators and my brother. I mean, it was all  
23 shared but I did probably the majority of that.

24 Q. Okay. And I believe you also had

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1 responsibility for traffic control and safety  
2 matters out on job sites?

3 A. Right.

4 Q. And you also had responsibility for

5 reviewing and approving contract items, bills, and  
6 invoices?

7 A. Some, yes.

8 Q. What were your brother's  
9 responsibilities as president of Skokie Valley  
10 Asphalt?

11 A. He did more of the office things,  
12 estimating, you know, whatever, insurance, banking  
13 matters, things like that.

14 Q. Most of his stuff was related to  
15 financial matters?

16 A. Yes, and estimating.

17 Q. Maybe you should explain on the record  
18 what you mean by estimating?

19 A. Well, when you bid a job, I mean, he  
20 would have like estimators working for him and he  
21 would work with -- well, not in any private work, in  
22 sales. They put a bid together, you know, the  
23 estimating, what it's going to cost and he was more  
24 involved in that.

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1 Q. Did your brother also do work as a  
2 liaison with the banks and suppliers and purchasing  
3 materials, making payments, managing payroll, and

4 reviewing accounts receivable and accounts payable?

5 A. Right.

6 Q. Did his duties also involve on-site  
7 meetings, reviewing on-site work, daily consultation  
8 with foremen and engineers, liaison with state and  
9 county, federal officials and private owners for  
10 whom work was performed?

11 A. Right.

12 Q. Now, I believe you were in the hearing  
13 room when you heard Mike Garretson's testimony about  
14 the NPDES permit that Skokie Valley Asphalt had?

15 A. Yes.

16 Q. And you're familiar that Skokie Valley  
17 Asphalt did have an NPDES permit?

18 A. Yes, I am.

19 Q. And who signed the DMRs or the  
20 discharge monitoring reports that were submitted to  
21 the Illinois EPA on behalf of Skokie Valley Asphalt  
22 Company?

23 A. I believe I signed them. If I wasn't  
24 there, I'm sure my brother signed them but I

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1 probably signed them most of the time.

2 Q. Can you describe for the Board the

3 procedure Skokie Valley Asphalt Company used to put  
4 the data together for the discharge monitoring  
5 reports and if I use DMRs, you'll understand that  
6 term?

7 A. Yeah.

8 Basically when we got the permit,  
9 I remember we set up with like a couple of our  
10 dispatchers out in the front, one being more  
11 responsible for it, and he would have somebody in  
12 our yard, a laborer or somebody, go down and get the  
13 water sample from the discharge pipe and deliver it  
14 over to the Northshore Sanitary District at that  
15 time.

16 They did our testing of the water  
17 and they would mail -- I believe mail us back a  
18 report. We would give it to the dispatcher that was  
19 in charge of it -- that would get funneled back to  
20 him -- and he would fill out the report and have me  
21 sign it and mail it down to the EPA.

22 Q. Could you please tell the Board the  
23 name of that employee who usually took care of  
24 filling out the DMR?

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1 A. Bob Christiansen.

2 Q. Now, and how often do you recall that  
3 Bob Christiansen was typically bringing you a DMR to  
4 sign?

5 A. Well, he was kind of -- I mean, we  
6 left him in charge, but I guess he was supposed to  
7 do it every month.

8 Q. What would you do when Bob  
9 Christiansen would bring you a DMR report to sign?

10 A. I would look at it and look at  
11 the -- there were three things, I believe, three or  
12 four that, as you've talked about, the suspended  
13 solids, oil, grease, and maybe pHs -- does that  
14 sound right? And I had a --

15 Q. Would it help if you looked at one of  
16 the forms?

17 A. I can. I mean, I don't know if I need  
18 to or not because I would answer one other thing,  
19 total suspended solids, it was when we would get a  
20 big storm. And on our property, we have a farm  
21 field that's 40 acres that flows into our retention  
22 basin, plus our ten acres and I asked people -- I  
23 think I asked Jim Huff, and I might have asked  
24 somebody at the Illinois EPA, is there a problem

1 with total suspended solids? And they said, not  
2 when you have a big storm.

3 I mean, if you can see storm water  
4 coming off of a 40-acre field that's just plowed for  
5 the winter, that brings dirt and everything into our  
6 ponds and are filthy and so we just always let them  
7 go.

8 I don't believe we ever were over  
9 on oil, grease, and pH. But as far as -- I know you  
10 had asked that before and that was talked about up  
11 here and we discussed that. I'd sign them and mail  
12 them on to the EPA.

13 Q. Now, what do you mean by that you  
14 would check for the three things in the DMR when  
15 Bob Christiansen would bring them to --

16 A. I always would just go get them. I  
17 might not have looked at them all the time. If I  
18 had time, I would look at them.

19 Q. Would you just look at them on the DMR  
20 reports and then sign the report or would you do  
21 anything else?

22 A. That's all I had ever done. And I  
23 probably didn't look at them all the time. Bob was  
24 mainly the one who was in charge of doing that. I

1 kind of just signed them -- if I was in a hurry, I  
2 would just sign them. Bob was the responsible  
3 person.

4 Q. Did you yourself ever do anything to  
5 determine whether the information contained on the  
6 DMR reports filled out by Bob Christiansen was  
7 accurate?

8 A. No.

9 Q. Did you ever check the report or  
10 letter that you got back from the Northshore  
11 Sanitary District to see whether Bob Christiansen  
12 had written that information down correctly on the  
13 DMR?

14 A. Not that I can remember. No, sir.

15 Q. There's a big white binder in front of  
16 you. Why don't we go to the front of that binder  
17 and if you would just flip to tab one behind the tab  
18 there, do you recognize that document?

19 A. I mean, I think this is a copy of  
20 our -- I mean, I'm sure that I've seen this.

21 Q. Is that a copy of the NPDES permit?

22 A. I'm sure that it is, yes.

23 Q. Directing your attention to  
24 Complainant's Exhibit No. 2, do you recognize that

1 document?

2 A. It's a -- what do you call them?

3 Q. A DMR?

4 A. Yeah.

5 Q. Is that the DMR that Skokie Valley  
6 Asphalt submitted?

7 A. I mean, they look like it. I would  
8 sign these usually.

9 Q. Is that your signature at the bottom?

10 A. Yes.

11 Q. And is that your name at the bottom of  
12 the page?

13 A. Yes.

14 Q. Maybe we can just flip through these  
15 carefully. If something doesn't look right, you can  
16 bring it to my attention.

17 Complainant's Exhibit No. 3, is  
18 that also a DMR submitted by Skokie Valley Asphalt  
19 Company?

20 A. Yes.

21 Q. And is that your signature at the  
22 bottom of that page?

23 A. Yes, it is.

24 Q. Complainant's Exhibit No. 4 is a DMR

1 submitted by Skokie Valley Asphalt Company?

2 A. Yes.

3 Q. And your name appears at the bottom of  
4 that page?

5 A. Yes.

6 Q. Complainant's Exhibit No. 5, another  
7 DMR with your name at the bottom of the page?

8 A. Yes.

9 Q. Complainant's Exhibit No. 6, did you  
10 have anything to do with the NPDES permit renewal  
11 application?

12 A. Not that -- my brother and I did talk  
13 about it, so I guess I did a little bit, yes.

14 Q. Okay. Your signature is not on that  
15 document, is it?

16 A. No.

17 Q. Whose signature does appear on that  
18 document?

19 A. Larry's. It's my brother's.

20 Q. Directing your attention to People's  
21 Exhibit No. 7, do you recognize that document?

22 A. I'm sure that I saw it, but I mean,  
23 it's on our letterhead to the IEPA.

24 Q. And does that relate to submission of

1 the additional information related to your NPDES  
2 permit renewal application? I think you might see  
3 that at the top of page 1.

4 A. Yes, I guess so.

5 Q. Do you not recall anything about  
6 needing to supply the Illinois EPA with additional  
7 information about the permit renewal application?

8 A. All I know -- I mean, the only thing  
9 that I remember really discussing with my brother is  
10 that we were told that we were going to be able to  
11 go in under a blanket permit and that's what  
12 our -- that's what we felt we were going to be able  
13 to do.

14 Q. But do you remember the Illinois EPA  
15 asking you --

16 A. I don't remember that.

17 Q. Okay.

18 A. No, I don't.

19 Q. Okay. After you were issued the NPDES  
20 permit in April, May of 1986, did you start  
21 submitting DMR reports at that time?

22 A. I remember we had to get our -- I  
23 think we had to get our discharge under the railroad  
24 tracks, so I don't think we started right away. I

1 think we started when we started discharging.

2 I can't tell you when that was. I  
3 think we had the permit for a little while before we  
4 started discharging.

5 Q. Let me direct your attention to  
6 Complainant's Exhibit No. 26. Do you recognize that  
7 exhibit?

8 A. Somewhat. I mean, I think it tells  
9 why we -- yes, I signed this.

10 Q. Can you describe for the record what  
11 that is?

12 A. It's a letter to the IEPA, I believe,  
13 that we didn't do any reports because we weren't  
14 discharging into the area that -- where we had the  
15 permit. We were in the process of putting our  
16 discharge tile under the tracks.

17 Q. And what is the date of that letter?

18 A. November 9, 1988.

19 Q. And who signed that letter on behalf  
20 of Skokie Valley Asphalt?

21 A. I did.

22 Q. Now, one thing that caught my  
23 attention under there is that your title in that

24 letter is --

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1 A. President.

2 Q. -- president.

3 Was that a typo?

4 A. Typographical error.

5 Q. Okay. Is that a true and correct copy  
6 of the letter?

7 A. I believe that it is, sure. I think  
8 this tells about when we finished our piping when  
9 Metra was buying the railroad, I believe, or  
10 Milwaukee Road at that time and we had a lot of  
11 trouble getting a permit, auger, under the tracks.

12 Q. Let me direct your attention to  
13 Complainant's Exhibit No. 27. It might be easier if  
14 you open that binder all the way.

15 A. I can read it.

16 Q. Do you recognize that?

17 A. Right.

18 Q. Can you describe for the Board or the  
19 record what that is?

20 A. It's a letter from Bob Christiansen  
21 about why we didn't file to report some discharge  
22 monitoring and it sounds like -- I mean, we did.

23 Bob had a heart attack. There were periods in there  
24 where we had new people involved and whether or

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1 not -- this was a letter stating that we didn't file  
2 some of these reports.

3 Q. And what is the date of that letter?

4 A. January 17, 1990.

5 Q. And does that appear to be an accurate  
6 copy of that letter?

7 A. I would say, sir, yes.

8 Q. And Bob Christiansen --

9 A. Yes.

10 Q. -- was the man you described  
11 earlier --

12 A. Right.

13 Q. Could you try and let me finish my  
14 question?

15 A. I'm sorry.

16 Q. The court reporter can only take one  
17 of us talking at the same time.

18 HEARING OFFICER SUDMAN: Yes.

19 Thank you.

20 BY MR. COHEN:

21 Q. Bob Christiansen was the man you

22 explained earlier who would normally transpose the  
23 information from the Nort shore Sanitary District --

24 A. Right.

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1 Q. -- and bring the DMR for your  
2 signature, correct?

3 A. Right.

4 Q. Do you recall on your site in  
5 Grayslake there ever being a gasoline pump?

6 A. Oh, sure.

7 Q. Was there still one there when you  
8 sold the business?

9 A. Yes.

10 Q. Was there ever a gasoline pump on the  
11 site that was removed?

12 A. I mean, we had an above ground pump  
13 and -- I mean, when we, you know, had to go to  
14 double wall tanks and everything, we put a whole new  
15 system in.

16 Q. Was there ever a time where you had a  
17 gasoline pump with an underground storage tank?

18 A. It could have been, yes. I mean, that  
19 could have been before our time there.

20 Q. Do you recall there being one during

21 Skokie Valley Asphalt?

22 A. Not when Skokie Valley was there --  
23 well, there could have been one but -- yes, I  
24 believe there could have been.

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1 Q. I think it might have been on the  
2 south end?

3 A. It could be, yes.

4 Q. And do you recall when Skokie Valley  
5 would have removed that pump and underground storage  
6 tank?

7 A. Probably sometime in the early '80s.

8 Q. You mentioned earlier that Skokie  
9 Valley Asphalt stopped producing asphalt at the  
10 Grayslake location I think you said 1981 or 1982?

11 A. Right.

12 Q. What did Skokie Valley Asphalt have to  
13 do to dismantle that operation?

14 A. Not much. I mean, it's like a big  
15 erector set. You take the asphalt and it gets --  
16 they put it down -- it comes in in pieces and it  
17 goes out in pieces.

18 Q. Maybe for those of us who don't know  
19 much about asphalt, can you describe what pieces

20 comprised the plant that you had to take down?

21 A. There were bins that the aggregate --  
22 before it's dried there's like five or six bins --

23 Q. I'm sorry?

24 A. They're bins. They're open bins that

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1 you dump into with an end-loader.

2 Q. Bins?

3 A. Bins.

4 Q. B-I-N-S?

5 A. Right.

6 And with the conveyor underneath  
7 that, the conveyor goes up into a rotary dryer that  
8 dries the aggregate sand and gravel and that  
9 carries -- there's an elevator that carries it up to  
10 the top of the plant where there's a screen because  
11 there's different sizes of the -- large stones,  
12 small stones and sand and they -- that screen  
13 separates those into bins that are in this plant.

14 This plant goes up and down --  
15 maybe it's 80 or 90 feet tall -- and that goes into  
16 bins. And underneath those bins, there's a weigh  
17 hopper and you draw out a certain amount for each  
18 batch of asphalt into that weigh hopper of the

19 aggregate and drops it into the pug mill. There's  
20 also --

21 Q. Excuse me. What is a pug mill?

22 A. That's the mixer; it's like your egg  
23 beater.

24 And then there's the asphalt tanks

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1 over here (indicating) that have a pump that go up  
2 to a weigh bucket and that weigh  
3 bucket -- it's on a scale also and that pumps it  
4 into the weigh bucket.

5 You get so much asphalt in the  
6 weigh bucket and that dumps it into the pug mill  
7 with the -- that's the liquid. It's about 95  
8 percent sand and gravel, five percent liquid  
9 asphalt, mixes it up, drops it into the truck.

10 Q. Now, we heard from, I believe,  
11 Mr. Klopke and Mr. Kallis that there are above  
12 ground storage tanks for liquid asphalt that --

13 A. Right. Those are different kind of  
14 tanks. The other tanks for the asphalt cement were  
15 removed when we sold the plant in 1981 or -- it was  
16 right around '81 or '82.

17 Q. How did you fuel the asphalt plant

18 when it was --

19 A. Gas.

20 Q. -- in place?

21 A. Natural gas.

22 Q. And what was the source of that  
23 natural gas, how did you --

24 A. We have a big line coming into the

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1 yard, like an eight or ten-inch line.

2 Q. Was that the only source of fuel?

3 A. Yes.

4 Q. And how did you supply liquid asphalt  
5 at the asphalt plant?

6 A. They were in tanks, above ground  
7 tanks, and then there was lines that came out of  
8 those tanks and went up to the weigh bucket, not  
9 underground, they were above ground.

10 Q. The tanks were above ground?

11 A. Yes.

12 Q. And where did the lines go?

13 A. They went right out of the tanks and  
14 up into the tower, the tower itself, and they were  
15 controlled -- it was like an automatic valve that  
16 would dump into the weigh bucket and shut off and --

17 you know, turn on and off.

18 Q. And when you stopped producing asphalt  
19 at the site in 1982, is that also the year where you  
20 tore down --

21 A. Yes.

22 Q. -- or took down this equipment?

23 A. Yes.

24 Q. Was this equipment then moved to the

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1 McHenry location?

2 A. No. We sold the plant at that time.  
3 We had another plant in McHenry.

4 Q. You also heard mention that there  
5 were some underground storage tanks on your site --

6 A. Yes.

7 Q. -- through approximately 1995, 1996?

8 A. Right.

9 Q. Do you recall when Skokie Valley  
10 Asphalt stopped using those underground storage  
11 tanks?

12 A. In that period when we had hired  
13 Mr. Huff and when we had a leak in one of them, we  
14 took them all out of the ground at that time.

15 Q. Were you using those underground

16 storage tanks up until that time?

17 A. Right. I believe there was one for  
18 the garage and two for -- one or two for waste oil  
19 in back of the garage -- I can't remember --  
20 underground.

21 Q. And what were you using waste oil for?

22 A. It would just be draining oil from the  
23 trucks and then we would have people come in and  
24 take it up and out.

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1 Q. When did you dissolve Skokie Valley  
2 Asphalt Corporation?

3 MR. JAWGIEL: Objection to the  
4 relevance, your Honor.

5 HEARING OFFICER SUDMAN: Why?

6 MR. JAWGIEL: Well, I don't know what  
7 the relevance is of the corporate status.

8 HEARING OFFICER SUDMAN: Well, you  
9 have actually a standing objection on that  
10 through your motion, so I'm going to allow  
11 him to answer it.

12 THE WITNESS: We sold the company in  
13 1998 to one of our competitors.

14 BY MR. COHEN:

15 Q. And did you also dissolve the  
16 corporation in 1998?

17 A. I believe -- whatever the -- there  
18 were so many things going on at that time. I  
19 can't -- I don't know exactly what the accountants  
20 and the attorneys did to be very honest with you and  
21 I don't understand it to this day.

22 So it was a hurry deal -- a  
23 hurry-up deal and so it's kind of distasteful to me  
24 and I don't like to talk about it.

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1 Q. Well, I'm sorry to bring it up but we  
2 have to.

3 A. I know we have to talk about it.

4 Q. Does Skokie Valley Asphalt Company,  
5 Incorporated still exist today?

6 A. I don't believe so. I think our  
7 competitor has the name.

8 Q. Who was your competitor?

9 A. That bought the company.

10 Q. What was their name?

11 A. Curran Contracting.

12 Q. But they don't use the name Skokie  
13 Valley Asphalt?

14 A. No, they don't.

15 Q. When you sold the company in 1998, how  
16 much did you sell it for?

17 MR. JAWGIEL: Objection, your Honor,  
18 with respect to how much and as to relevance  
19 at this point in time.

20 HEARING OFFICER SUDMAN: Overruled.

21 You can answer.

22 THE WITNESS: Well, you gave a number  
23 out. I think you said \$8 million if that's  
24 what it was. It was somewhere in that

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1 neighborhood, between the 7 and \$8 million.  
2 Most of it went to suppliers. They wrote  
3 checks directly to our suppliers, a lot of  
4 it.

5 BY MR. COHEN:

6 Q. Was there a written agreement?

7 A. Oh, yeah.

8 MR. JAWGIEL: Your Honor, if you just  
9 want to note for the record we're, obviously,  
10 going to have a standing objection to --

11 HEARING OFFICER SUDMAN: Yes,

12 Mr. Jawgiel, you have a standing objection to

13 the relevance of the financial information.

14 MR. JAWGIEL: And Exhibit 35 just for  
15 the record.

16 HEARING OFFICER SUDMAN: Okay.

17 BY MR. COHEN:

18 Q. Mr. Frederick, I just put in front of  
19 you a red-ribbed envelope, I believe, with two thick  
20 binders in it. It's marked on the front  
21 Complainant's Exhibit 35 and it's in two volumes, if  
22 you can take a look at that --

23 A. Okay.

24 Q. I certainly don't want you to read the

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1 whole thing.

2 A. Okay.

3 Q. The copy I have is marked volume 1 of  
4 2 and volume 2 of 2. Is yours as well?

5 A. Yes.

6 Q. Can you describe for the Board what  
7 that is?

8 MR. JAWGIEL: Your Honor, I'm going to  
9 object. Unless he views each and every  
10 document in this exhibit, how is he going to  
11 say what it is? I mean, it's absurd to hand

12 him what appears to be about five inches  
13 thick of a document and say, well, what is  
14 it.

15 HEARING OFFICER SUDMAN: I agree. I  
16 mean, has he seen this before?

17 MR. COHEN: His signature is on it, so  
18 I'm assuming.

19 HEARING OFFICER SUDMAN: I haven't  
20 seen this before. I guess I'm not entirely  
21 sure -- is this --

22 MR. JAWGIEL: If you don't know if his  
23 signature is on every --

24 HEARING OFFICER SUDMAN: Which

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1 document are you looking at?

2 MR. JAWGIEL: In Exhibit 35, he's  
3 trying to have him identify it in mass. If  
4 he has specific documents he wants to refer  
5 him to, so be it, but to hand him five inches  
6 of documents and say, well, what is it, I  
7 mean, I think is a bit absurd.

8 HEARING OFFICER SUDMAN: I mean, if  
9 you would like, I can have him look at the  
10 table of contents for each volume and give

11 his opinion on what it appears to be.

12 MR. COHEN: Your Honor, I don't think  
13 it's necessary; it is one document. It's a  
14 document he's familiar with his signature.  
15 If you just give me a minute, I'll be able to  
16 establish that.

17 HEARING OFFICER SUDMAN: Okay.

18 BY MR. COHEN:

19 Q. Mr. Frederick, have you seen this  
20 document before?

21 A. Yeah.

22 Q. Volume 1 of 2, on page 30 of that  
23 document is a signature page?

24 A. Right.

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1 Q. Does your signature appear on this  
2 document?

3 A. Yes.

4 Q. Does this document, the asset purchase  
5 agreement between your company, the shareholders,  
6 and Curran Contracting for the sale --

7 A. I'm sure that it all is.

8 Q. Is the rest of the material in this  
9 volume and the second volume attachments to this

10 document?

11 A. That's right.

12 Q. Directing your attention to page 4 in  
13 that same volume --

14 A. It's not numbered but is that the  
15 asset purchase agreement?

16 Q. You don't have all the page numbers on  
17 the bottom there?

18 MR. JAWGIEL: Neither do we.

19 THE WITNESS: I've got 3 and then it  
20 goes to asset purchase agreement.

21 MR. JAWGIEL: We have -- it looks like  
22 a document is numbered but there's no  
23 differentiation.

24 THE WITNESS: Here's a 4, purchase

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1 price and payment.

2 MR. JAWGIEL: Right. Purchase price,  
3 4, is numbered. Is that the one you're  
4 referring to?

5 MR. COHEN: Yes.

6 BY MR. COHEN:

7 Q. And what was the initial purchase  
8 price for Skokie Valley Asphalt?

9 A. \$8,229,000.

10 Q. As best you can tell in flipping  
11 through this document, does this appear to be a true  
12 and accurate representation of the agreement between  
13 Skokie Valley Asphalt and Curran Contractors?

14 A. That's right.

15 It doesn't have the page that  
16 shows where we paid --

17 Q. Excuse me. There's no question  
18 pending.

19 A. Strike that part.

20 HEARING OFFICER SUDMAN: Sustained.

21 MR. COHEN: Madam Hearing Officer, may

22 I have a moment?

23 HEARING OFFICER SUDMAN: Yes.

24 BY MR. COHEN:

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1 Q. Do you recall ever receiving dust  
2 complaints from the Skokie Valley Asphalt?

3 MR. JAWGIEL: Your Honor, objection to  
4 relevance. It has nothing to do with this  
5 complaint that's before us here and there  
6 hasn't even been a foundation laid.

7 HEARING OFFICER SUDMAN: What kind of

8 complaints?

9 MR. COHEN: Dust.

10 HEARING OFFICER SUDMAN: Dust

11 complaints?

12 MR. JAWGIEL: Same objection, your  
13 Honor. Dust complaints -- I don't know what  
14 relevance dust complaints have with respect  
15 to the cause of action. There's nothing in  
16 the complaint alleging any allegations of  
17 dust complaints.

18 HEARING OFFICER SUDMAN: What is this  
19 going towards?

20 MR. COHEN: Well, the next question  
21 will be what did you do.

22 HEARING OFFICER SUDMAN: Okay. I'll  
23 give you some leeway to see where this is  
24 going.

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1 BY MR. COHEN:

2 Q. Did you ever receive dust complaints  
3 from the trucks going to the site?

4 A. There could have been some.

5 Q. And what did Skokie Valley Asphalt do  
6 at times to try and control the dust?

7           A.       Pave the yard.

8           Q.       Before you paved the yard, did you  
9 ever spray any materials on the site?

10          A.       Oh, yes.

11          Q.       What did you use to spay on the site?

12          A.       MC-30 prime dust control asphalt. We  
13 sold billions of gallons of it.

14          Q.       And what was that called?

15          A.       MC-30 prime asphalt, liquid asphalt,  
16 not drain oil. It was a dust control oil that was  
17 used all over the State of Illinois.

18          Q.       Do you recall how long the time period  
19 you used that to spray your lot before you paved it?

20          A.       Well, parts of it you would spray it  
21 and it would turn into paving eventually.

22          Q.       Do you recall how long a time period  
23 that was for?

24          A.       Maybe about three or four years.

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1                   MR. COHEN: I have nothing further at  
2 this time.

3                   HEARING OFFICER SUDMAN: Thank you.

4                   THE WITNESS: You know, aren't you  
5 going to talk about the DMRs anymore?

6 HEARING OFFICER SUDMAN: Sir, your  
7 attorney will represent you. He'll ask you  
8 all the questions you need.

9 MR. JAWGIEL: I'll ask him some  
10 questions, but we are reserving our right to  
11 call him back in our chief in case as.

12 HEARING OFFICER SUDMAN: Yes.

13 MR. JAWGIEL: And I assume he would be  
14 called as an adverse witness given the nature  
15 of the questions?

16 HEARING OFFICER SUDMAN: Yes.

17 C R O S S - E X A M I N A T I O N

18 BY MR. JAWGIEL:

19 Q. Mr. Frederick, we had talked a little  
20 bit about how much money gross the sale was of this  
21 facility, Skokie Valley Asphalt. What was the net?

22 A. You know, I can't answer that. I  
23 really -- I don't know. I know that we had  
24 agreements with Faulken Materials, Meyer Materials,

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1 Seneca Petroleum, and the Bank of Waukegan that they  
2 wrote checks out at the closing to those creditors  
3 and I don't remember exactly what the net was.

4 Q. And with respect to any economic value

5 or benefit that Skokie Valley may have received from  
6 the contamination of the Avon drainage ditch, was  
7 there any benefit to Skokie Valley in your opinion?

8 A. No.

9 Q. How much money did Skokie Valley spend  
10 in efforts to directly absorb oil off the drainage  
11 ditch?

12 MR. COHEN: Your Honor, based on the  
13 fact that counselor has reserved the right to  
14 call him as a witness in his case in chief, I  
15 didn't ask any questions on this topic.

16 HEARING OFFICER SUDMAN: What does  
17 this relate to?

18 MR. JAWGIEL: Well, they're talking  
19 about economic benefit and I think that's the  
20 whole purpose of bringing out how much they  
21 sold this business to --

22 HEARING OFFICER SUDMAN: All right.  
23 Well, you opened the door.

24 MR. JAWGIEL: The door is wide open at

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1 this point.

2 HEARING OFFICER SUDMAN: Go ahead.

3 BY MR. JAWGIEL:

4 Q. How much money did Skokie Valley spend  
5 in directly attempting to absorb the oily sheen that  
6 was on the Avon drainage ditch?

7 A. I would suspect that in labor and  
8 probably some materials that it probably cost  
9 us -- maybe with our labor, probably anywhere from  
10 10 to \$15,000.

11 Q. Did Skokie Valley also undertake the  
12 removal of some underground storage tanks from this  
13 facility?

14 A. Yes.

15 Q. And how much would you estimate the  
16 cost was to Skokie Valley of removing the tanks from  
17 the site?

18 A. Probably 5 to \$7500 -- 5,000 to 7,500.

19 Q. Per tank?

20 A. Well, the whole thing I would think  
21 without the cost that we had for Jim Huff, maybe as  
22 much as \$10,000. I don't think we ever had that  
23 sophisticated of an accounting system.

24 Q. Now, did you get involved in laying

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1 the asphalt for Skokie Valley?

2 A. Well, I directed people to do it. I

3 mean, I didn't --

4 Q. Did you actually go out there and lay  
5 the asphalt back in 1995?

6 A. No.

7 Q. Did you actually go out there and lay  
8 gravel in 1995?

9 A. No.

10 Q. Did you actually go out there and load  
11 trucks?

12 A. No.

13 Q. Did you actually go out there and take  
14 samples for the discharge for the DMR?

15 A. No, I did not.

16 Q. Did you actually go out there and test  
17 the samples that were taken for the DMRs?

18 A. No, I did not.

19 Q. Did you actually fill in the DMR  
20 reports?

21 A. No.

22 Q. Did you mail the DMRs?

23 A. No.

24 Q. Did you manage the underground storage

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1 tanks that were on the facility?

2           A.       Well, I mean, I didn't have anything  
3 to do with getting them filled or emptied or  
4 whatever, but I told people that, you know, what we  
5 needed to do.

6           Q.       Okay. I think you already testified  
7 that there was an individual from Skokie Valley  
8 whose job it was to collect the samples for the  
9 DMRs; is that correct?

10          A.       Right.

11          Q.       And what was the name of that  
12 individual?

13          A.       Robert Christiansen.

14          Q.       Okay. And when you signed the DMRs,  
15 which are Exhibits 11 through 18, did you sign those  
16 DMRs based on the best knowledge you had regarding  
17 the accuracy of the data contained?

18          A.       Yes.

19          Q.       And was it your understanding, sir,  
20 that certification just asked you for your knowledge  
21 to certify when you signed that document?

22          A.       Right. I mean, I assumed that  
23 everything -- that the sample that was taken was  
24 taken to Northshore Sanitary District. Bob filled

1 out the report that we got back from them and I  
2 signed it.

3 Q. Okay. So just so it's clear, you  
4 didn't actually take the samples or fill out the  
5 form or mail the forms to the IEPA regarding the  
6 DMRs?

7 A. No, I did not.

8 Q. Why did you sign the reports, the DMR  
9 reports?

10 A. I don't know. It was just always that  
11 I signed them. I guess we signed -- or I signed a  
12 check or signed whatever. We never had anybody  
13 sign, you know, a lot of things in the company. I  
14 guess it was just -- I don't know. I just always  
15 signed them.

16 Q. Now, at some point in time, did you  
17 become aware that there was an allegation that  
18 duplicative reports had been filed by Skokie Valley?

19 A. Absolutely.

20 Q. And what, if anything, did Skokie  
21 Valley do to rectify the situation?

22 A. Okay. First of all, we had hearings  
23 with probably three or four different people that  
24 worked for the -- your job is at the AG's office; is

1 that right? -- the attorneys with the AG's office  
2 because they sent us things and they said you filed  
3 duplicate forms and you filed -- you know, whatever  
4 they were, they were wrong or whatever and we went  
5 through about three or four different -- because  
6 they would get a job there in the boom times of the  
7 '90s and then all of a sudden they were gone to a  
8 law firm. And we finely hired --

9 MR. COHEN: Your Honor, I'm going to  
10 object to the narrative.

11 THE WITNESS: Well, that's what they  
12 did; it's the truth. You can strike that if  
13 you want to.

14 HEARING OFFICER SUDMAN: Just answer  
15 the question, please.

16 THE WITNESS: Yes, ma'am.

17 And we hired an attorney. We  
18 hired --

19 MR. COHEN: Objection, no question is  
20 pending.

21 HEARING OFFICER SUDMAN: Is there a  
22 question pending?

23 MR. JAWGIEL: I asked him what did  
24 they do when they became aware of duplicative

1 DMRs being filed?

2 THE WITNESS: Because we had -- didn't  
3 the AG's office -- if I remember right, we  
4 went down to the Attorney General's Office  
5 like five or six times in the big orange  
6 building in Chicago, so there must have been  
7 some correspondence stating that we did  
8 something wrong; this was in the '90s.

9 HEARING OFFICER SUDMAN: And I believe  
10 his question is what did you then do?

11 THE WITNESS: What did we do? We  
12 hired -- we went down and we saw these people  
13 and we hired an attorney to come with us,  
14 Murray Townselman, an attorney in Chicago.  
15 And we had like five or six meetings with an  
16 attorney by the name of Beth Williams, I  
17 believe -- they can go back and find out --  
18 and a gentleman from Springfield; he used to  
19 come up on the train.

20 We went through all of this and we  
21 found out that when Bob had his heart attack,  
22 they sent two -- and we had an agreement with  
23 these people and I'm telling the truth -- the  
24 duplicate copies that were void sent in for

1 one month and we also -- the ones that  
2 weren't turned in, we had copies of those  
3 that were -- because we had the reports from  
4 the Northshore Sanitary District that were  
5 mailed.

6 You know, we had in our files that  
7 were lost -- we say that they were lost down  
8 at the EPA -- we never sent them, you know,  
9 the mail through the mail. We thought we had  
10 hammered out an agreement on this portion of  
11 the DMRs with the USEPA. The attorney  
12 left -- Beth Williams left.

13 Our attorney, Murray Townselman,  
14 had a heart attack and he sent us a thing  
15 that he was out of business and we left it  
16 lie up until now, up until we've had maybe a  
17 couple other attorneys going through this  
18 thing again. And these gentlemen right here  
19 are the ones who have stayed with it and here  
20 we are today. So I mean, it's been going on  
21 since the early '90s.

22 HEARING OFFICER SUDMAN: Thank you.

23 THE WITNESS: That's what we did

24 and --

1 BY MR. JAWGIEL:

2 Q. Hold on now.

3 A. I'm sorry.

4 Q. Now, with respect to the DMRs that  
5 were allegedly duplicative, did you actually have  
6 the testing done during those periods of time and  
7 they just didn't make it to the report?

8 A. That's what we felt and that's -- we  
9 had some -- I mean, we had a whole file. I worked  
10 on this and I don't even know what happened to it  
11 because it was so long ago, but we had reports  
12 from -- we went back to the Northshore Sanitary  
13 District, got the reports and -- because we had our  
14 copies of them and showed them to the AG's office.

15 And there were some -- there were  
16 a couple of duplicates where at the end of the month  
17 Bob might have sent it out. And he was gone with  
18 a -- he had some problems and I don't want to go  
19 into those -- and Lloyd, his assistant, might have  
20 sent two copies.

21 I mean, we had an agreement there  
22 was clerical errors always and never any -- I mean,  
23 how could we gain from trying to do this because our  
24 reports never were out of kilter?

1 Q. Okay. Now, with respect to the file  
2 that you had maintained and got the reports from the  
3 testing facility, those documents were destroyed  
4 when you sold?

5 A. You know, when we sold we had so  
6 many -- there was an office and it was not the best  
7 relationship with these people. They came in and  
8 cleaned out our offices.

9 I mean, I had to take -- I was  
10 hired to kind of run this thing and what happened to  
11 those -- I can look. I mean, I don't know if we  
12 have them anymore or not because I thought at one  
13 point that was all pretty much taken care of.

14 Q. Let me show you what we'll mark as  
15 Respondent's Exhibit No. 1 for identification. Take  
16 a look at that document.

17 (Witness perusing  
18 the document.)

19 A. Okay. This is some of the stuff that  
20 we worked out, yes, with Mr. Townselman and that we  
21 submitted to the Attorney General's Office back in  
22 the mid '90s.

23 Q. Okay. And was this document the type

24 of document that Skokie Valley would keep in the

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1 ordinary course of business?

2 A. Yes.

3 Q. And was this document particularly a  
4 document that Skokie Valley kept in its ordinary  
5 course of business?

6 A. It must have been, yes.

7 Q. And is this a true and accurate copy  
8 of the document it reflects to be?

9 A. Yes.

10 MR. COHEN: Judge, I'm going to object  
11 for a couple of reasons: First, I'd like it  
12 described a little better for the record;  
13 second, the witness has already testified  
14 that all the records have been destroyed.

15 I would assume this is a copy from  
16 our records. As long as that's clear on the  
17 record how they got this, I have no objection  
18 to him using it. But I don't think it's fair  
19 to say that, yes, this is a record we keep in  
20 the ordinary course of business when they  
21 don't have any records.

22 MR. JAWGIEL: Well, your Honor, that

23 objection is baseless. It's not whether or  
24 not you could keep it in your records

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1 contemporaneous to this hearing. It's  
2 whether this would have been a document you  
3 kept in the ordinary course of business or  
4 whether this was a document that was kept in  
5 your ordinary course of business and whether  
6 this is a true and accurate copy.

7 The source itself has no relevance  
8 whatsoever to laying that foundation and it  
9 goes to our whole defensive latches. How are  
10 we supposed to defend ourselves unless we can  
11 find documents we did have in our business  
12 records and file alternative sources for it?

13 HEARING OFFICER SUDMAN: I'm not  
14 saying it's not admitted, but I think it's  
15 worth clarifying for the record what the  
16 source was.

17 MR. JAWGIEL: Well, I don't know if  
18 he's going to know what the source was.

19 HEARING OFFICER SUDMAN: Well, then  
20 he'll say he doesn't know.

21 MR. JAWGIEL: And I don't understand

22 the purpose of clarifying the source. I  
23 truly don't. I don't understand. Whether we  
24 get it from the AG's office or whether we get

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1 it from a different source whatsoever has no  
2 relevance.

3 This is something they would have  
4 kept in their ordinary course of business --  
5 did keep in the ordinary course of business  
6 and it's a true and accurate copy of that  
7 document.

8 HEARING OFFICER SUDMAN: I think it's  
9 relevant because there's been some testimony  
10 about not having certain records. I just  
11 think it's relevant what the source was. I'm  
12 not saying that the document is not going to  
13 be admissible.

14 BY MR. JAWGIEL:

15 Q. Do you actually know where a copy of  
16 the document came from?

17 A. No, I don't recall where it came from  
18 actually.

19 HEARING OFFICER SUDMAN: Thank you.

20 BY MR. JAWGIEL:

21 Q. What was your understanding of the  
22 purpose of Exhibit No. 1?

23 A. Well, I think this was an explanation  
24 from Murray to the Attorney General about some of

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1 the discrepancies in the monitoring reports, an  
2 explanation of them.

3 Q. Did Skokie Valley at some point in  
4 time file -- strike that.

5 Did Skokie Valley at some point in  
6 time mail to the Illinois EPA amended reports with  
7 the corrected information from the testing facility?

8 A. I'm not sure of that. I don't know;  
9 we could have.

10 Q. You had mentioned in your examination  
11 by Mr. Cohen that you thought that Skokie Valley was  
12 going to be covered under a blanket permit and  
13 that's one of the reasons why an NPDES permit wasn't  
14 renewed?

15 A. That's right.

16 Q. What was your understanding regarding  
17 this blanket permit?

18 A. Well, I mean --

19 MR. COHEN: Your Honor, I'm going to

20 object because it's really irrelevant in  
21 terms of this case. The violations the  
22 plaintiff is facing in terms of the law and  
23 the permittee's understanding really has no  
24 relevance.

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1 HEARING OFFICER SUDMAN: Well, I think  
2 it goes to his affirmative defense that the  
3 Board said they were allowed the raise.

4 I'll let you go ahead.

5 MR. JAWGIEL: I think it goes directly  
6 to it actually.

7 HEARING OFFICER SUDMAN: Yes.

8 THE WITNESS: When we had to renew the  
9 permit, when it came up, we had -- there was  
10 all this talk of the different associations,  
11 the Illinois Asphalt Paving Association and  
12 the Illinois Truckers' Association, going  
13 together and getting blanket permits for  
14 different operations, ours being mainly a  
15 trucking and equipment storage yard.

16 That's what we were going to go  
17 with, this trucking thing, and my brother  
18 talked to somebody in the Illinois EPA's

19 office and said, well, yeah, that people are  
20 going to get all of these blanket permits, so  
21 at that particular time we didn't apply for  
22 one. We thought that we could get a blanket  
23 permit.  
24 BY MR. JAWGIEL:

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1 Q. Was it your understanding that Skokie  
2 Valley at that point in time was not required to  
3 renew its NPDES permit because it was going to fall  
4 under this blanket permit based on what was said by  
5 the Illinois EPA?

6 MR. COHEN: Objection, leading.

7 MR. JAWGIEL: I'm asking whether or  
8 not it was his understanding or not.

9 MR. COHEN: Through the whole thing  
10 this has now been one topic covered on direct  
11 examination.

12 MR. JAWGIEL: They talked about the  
13 NPDES permit. It clearly -- and the  
14 parameters, not renewing it and things of  
15 that nature and I'm trying to establish our  
16 affirmative defense.

17 MR. COHEN: And you're leading him

18 through a blanket permit topic that was not  
19 covered on direct.

20 HEARING OFFICER SUDMAN: Can you  
21 rephrase the question?

22 MR. JAWGIEL: Your Honor, can you  
23 please admonish the State that they're not to  
24 direct their comments to me; they're to

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1 direct the comments to the Court.

2 HEARING OFFICER SUDMAN: I will remind  
3 all counsel to please direct your comments to  
4 me.

5 Could you remind me of what the  
6 question was, please?

7 MR. JAWGIEL: Sure.

8 BY MR. JAWGIEL:

9 Q. Sir, what was your understanding of  
10 why Skokie Valley did not renew its permit at the  
11 time that it was required to be?

12 A. We were under the understanding that  
13 we could go in under a blanket permit under one of  
14 the associations that we belonged to.

15 Q. And what was your understanding of who  
16 lead you to believe that?

17           A.       Well, I mean, my brother did talk to  
18 somebody down at the EPA's office. Now whether or  
19 not -- that's a million years ago whether or not we  
20 can come up with the name of that person. And  
21 everybody -- all of our competitors and people that  
22 we dealt with were going to get a permit under this  
23 blanket permit.

24                   MR. COHEN: Objection, your Honor,

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1           move to strike. Both answers are based on  
2 hearsay.

3                   HEARING OFFICER SUDMAN: Well, I think  
4 it goes to -- it just goes to his  
5 understanding. I don't think he's -- I'll  
6 allow it.

7 BY MR. JAWGIEL:

8           Q.       There was some talk about a particular  
9 area surrounding the Skokie Valley site. What type  
10 of properties or facilities, if you will, existed  
11 around the Skokie Valley site back in May of 1995?

12           A.       Well, I mean, to the west of us, we  
13 had a farm and landscapers. To the south we had  
14 more farms. To the east there was a landfill, a  
15 railroad to the south and a car dealership to the --

16 or I mean, to the north the railroad tracks and the  
17 car dealerships and houses.

18 Q. And was there a subdivision of houses  
19 that was in that area?

20 A. Yes.

21 MR. JAWGIEL: At this point in time,  
22 your Honor, I'm going to stop my examination  
23 of Mr. Frederick. We do reserve the right to  
24 recall him in our case in chief.

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1 HEARING OFFICER SUDMAN: Okay.

2 Mr. Cohen, do you have anymore  
3 questions?

4 MR. COHEN: I have nothing further.

5 HEARING OFFICER SUDMAN: Okay. Thank  
6 you very much, Mr. Frederick. You are  
7 finished for today but you may be needed  
8 tomorrow.

9 THE WITNESS: Okay.

10 HEARING OFFICER SUDMAN: Anything  
11 anyone wants to say while we're still on the  
12 record?

13 MR. JAWGIEL: No.

14 HEARING OFFICER SUDMAN: Shall we go

15 off the record for a moment?

16 MR. JAWGIEL: Yes, please.

17 HEARING OFFICER SUDMAN: Okay. We'll  
18 go off the record.

19 THE REPORTER: Okay.

20 HEARING OFFICER SUDMAN: We are back  
21 on the record. It is 4:40. We've decided to  
22 conclude for today. We will recess and we  
23 will reconvene tomorrow at 9:00 a.m.

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1 (Whereupon, at 4:40 p.m., an  
2 adjournment was taken to  
3 9:00 a.m., on Friday,  
4 October 31, 2003.)

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1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF DUPAGE )  
4  
5

6 I, MARIA E. SHOCKEY, CSR, do  
7 hereby state that I am a court reporter doing  
8 business in the City of Chicago, County of DuPage,  
9 and State of Illinois; that I reported by means of  
10 machine shorthand the proceedings held in the  
11 foregoing cause, and that the foregoing is a true  
12 and correct transcript of my shorthand notes so

13 taken as aforesaid.

14

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16

\_\_\_\_\_  
Maria E. Shockey, CSR  
Notary Public,  
DuPage County, Illinois

17

18

19 SUBSCRIBED AND SWORN TO  
before me this \_\_\_\_ day  
20 of \_\_\_\_\_, A.D., 2003.

21

\_\_\_\_\_  
22 Notary Public

23

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