

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

BRIMFIELD AUTO & TRUCK,)
 Petitioner)
)
 -vs-) DOCKET PCB 12-134
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
 Respondent.)

Hearing held, pursuant to notice, on Tuesday,
April 22, 2014, at the hour of 12:30 p.m. at 1021 N.
Grand Avenue East, Springfield, Illinois, before
CAROL WEBB, duly appointed Hearing Officer.

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REPORTER: LAUREL A. PATKES, CSR #084-001340

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APPEARANCES:

ROBERT RIFFLE
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appearing on behalf of
Petitioner;

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appearing on behalf of
Respondent.

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I N D E X

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IDENTIFIED ADMITTED

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Hearing Exhibit H 26 54

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1 HEARING OFFICER WEBB: Good
2 afternoon. My name is Carol Webb. This is the
3 hearing for PCB 12-134, Brimfield Auto & Truck
4 versus IEPA.

5 It is April 22nd, and we are
6 beginning at 12:30 p.m.

7 For the record, although this
8 facility is located in Peoria County, there was no
9 known public interest in this case so I granted the
10 parties' request to hold the hearing in Springfield.

11 There are no members of the
12 public present although we do have Connie Newman
13 here who is the Board's public information officer.

14 At issue in this case is the
15 site investigation plan budget for a facility
16 located at 408 East Knoxville Road in Brimfield.

17 The Pollution Control Board
18 members will make the final decision in this case.
19 My purpose is to conduct the hearing in a neutral
20 and orderly manner so we have a clear record of this
21 proceeding.

22 This hearing was noticed
23 pursuant to the act in the Board's rules and will be
24 conducted pursuant to Sections 101.600 through

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1 101.632 of the Board's procedural rules.

2 At this time I'll ask the
3 parties to please make their appearances on the
4 record.

5 MR. RIFFLE: Good morning.

6 Robert Riffle on behalf of the
7 petitioner.

8 MR. SIEVERS: Scott Sievers on behalf
9 of the respondent.

10 HEARING OFFICER WEBB: Thank you.

11 Before we begin, I would like to
12 address the motion for leave to supplement the
13 administrative record which I understand is
14 unopposed by the petitioner.

15 The motion is granted.

16 Would petitioner like to make an
17 opening statement?

18 MR. RIFFLE: Yes, please.

19 The granting of that motion and
20 that document that is attached to it actually
21 resolves a part of this appeal, and we will
22 stipulate to the applicability of those
23 reimbursement rates so that at least a part of the
24 appeal was now moot or rendered moot by that.

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1 I think the sole issue remaining
2 in the case relates to the depth of monitoring wells
3 and sampling, and so this is now a very streamlined
4 appeal, and the amount of controversy is relatively
5 small so that we can expedite things for this
6 particular appeal pretty quickly.

7 So with that, that's all the
8 opening comments I have.

9 HEARING OFFICER WEBB: Okay.

10 Mr. Sievers, would you like to
11 make any opening statement?

12 MR. SIEVERS: No. No thank you.

13 HEARING OFFICER WEBB: All right.
14 You may call your first witness.

15 MR. RIFFLE: Yes. I would call Al
16 Green.

17 HEARING OFFICER WEBB: All right.
18 Would the court reporter please swear in the
19 witness?

20 (Whereupon the witness was sworn
21 by the reporter.)
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ALLEN GREEN

called as a witness herein, on behalf of the
Petitioner, having been first duly sworn on his
oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RIFFLE:

**Q. Mr. Green, please state your name for
the record.**

A. Allen Green.

Q. And what is your current occupation?

A. I'm president of Midwest
Environmental Consulting and Remediation Services.

**Q. Did you have occasion in that
capacity to work for a customer called Brimfield
Auto & Truck?**

A. Yes.

**Q. And what was the nature of that
project?**

A. It was an existing leaking
underground storage tank site that we were asked to
take and see to completion as far as the
environmental closure of the existing incident.

Q. Okay. So you were coming in after

1 **somebody had already done some work on that project?**

2 A. Yes.

3 **Q. Okay. And did you do some drilling**
4 **and sampling at that property?**

5 A. Yes.

6 **Q. And just briefly describe the nature**
7 **of that drilling and sampling.**

8 A. We did what was called a Stage I
9 investigation which was preliminary borings and, if
10 required, in this case it did, monitoring wells to
11 initiate the corrective action if required on this
12 particular site. It's a preliminary investigation.

13 **Q. Are you familiar with the petition**
14 **for review and hearing which was filed for this**
15 **particular case?**

16 A. Yes.

17 **Q. If I understand correctly from the**
18 **exhibits to the petition for review and hearing, you**
19 **sought in a budget eligibility for reimbursement for**
20 **drilling down to 125 feet and for monitoring and**
21 **recovery wells down to a hundred feet, is that**
22 **correct?**

23 A. Yes.

24 **Q. And can you explain to the hearing**

1 **officer why those depths were chosen?**

2 A. Basically, we're either required to
3 drill to a certain depth below the bottom invert of
4 the underground storage tanks or groundwater if it's
5 obvious, groundwater bearing strata, or an
6 impermeable strata that we feel, you know, would
7 impede the migration contamination from the site.

8 So basically, this was to get a
9 feel for the geology of the site and try to
10 determine if further investigation would be
11 warranted or if the contamination levels, the
12 geology was such that we could close the incident.

13 **Q. Okay. And if I understand correctly,**
14 **Exhibit B to the petition is the letter received**
15 **from the Illinois Environmental Protection Agency**
16 **which modified the proposed budget, is that correct?**

17 A. Yes.

18 **Q. And as an exhibit to Exhibit B, it's**
19 **actually called Attachment A, can you review that**
20 **document and explain your understanding of the**
21 **modifications with respect to the depths of the**
22 **monitoring wells and sampling?**

23 A. The depth of the monitoring wells or
24 the borings and then the installation of the

1 monitoring wells was modified to a lower level than
2 what we had done on the site based upon, according
3 to letter, the groundwater levels encountered on the
4 site.

5 **Q. Okay. And do you believe that the**
6 **depths that you requested in the budget were proper?**

7 A. Yes.

8 **Q. And can you explain for the record**
9 **why you think they were proper?**

10 A. Without something very obvious on the
11 site as far as the geology or groundwater levels
12 during a Stage I which is the initial investigation,
13 we don't know where the groundwater levels are at
14 until we install monitoring wells and determine what
15 the groundwater levels are.

16 **Q. Have you encountered this issue with**
17 **other projects that you've worked on?**

18 A. A few times.

19 **Q. And what has been the resolution of**
20 **that issue on those other projects?**

21 A. It's been resolved in that basically
22 they acknowledge the fact that until you complete
23 the Stage I, as long as it's within reason, the
24 number of borings, wells, in the Stage I, as long as

1 the numbers are within reason, we've been told that
2 it's acceptable to, you know, determine your
3 groundwater levels based upon the results of your
4 Stage I.

5 **Q. Okay. Are their particular project**
6 **managers that have made that concession to you?**

7 A. Yes.

8 **Q. And who are those project managers?**

9 A. I mean, I can't say exactly but
10 there's probably three or four of them that we've
11 had that issue.

12 Normally the issue doesn't come
13 up, but three or four times it's come up, and once
14 we've talked to the project manager, then it's been
15 resolved, and it's being addressed in Stage II. We
16 know where the groundwater levels are at so,
17 therefore, if you're going out in a Stage II
18 investigation, then you can adjust your depths
19 accordingly.

20 **Q. So for purposes of Stage I, you think**
21 **that those steps that you've budgeted are**
22 **appropriate?**

23 A. Yes.

24 **Q. And you've encountered this issue**

1 **before on other projects, and it's been resolved in**
2 **favor of approving those depths that you sought in**
3 **connection with this project?**

4 A. Yes.

5 MR. SIEVERS: Objection. Leading.

6 HEARING OFFICER WEBB: I'll allow it.

7 MR. RIFFLE: He's already answered

8 so...

9 No further questions. Thank
10 you.

11 MR. SIEVERS: I don't have any
12 questions for you, Mr. Green.

13 HEARING OFFICER WEBB: Okay. Thank
14 you, Mr. Green.

15 (Witness excused.)

16 HEARING OFFICER WEBB: Mr. Riffle, do
17 you have anything else you'd like to present here
18 today?

19 MR. RIFFLE: I don't. We rest.

20 HEARING OFFICER WEBB: Is this your
21 witness?

22 MR. SIEVERS: It is, Your Honor.

23 The respondent calls Harry
24 Chappel.

1 HEARING OFFICER WEBB: Mr. Chappel,
2 if you wouldn't mind sitting over there.

3 Would the court reporter please
4 swear in the witness?

5 (Whereupon the witness was sworn
6 by the reporter.)

7
8 HARRY CHAPPEL
9 called as a witness herein, on behalf of the
10 Respondent, having been first duly sworn on his
11 oath, was examined and testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. SIEVERS:

15 Q. Will you state your name and spell it
16 for the court reporter?

17 A. Harry Chappel, C-h-a-p-p-e-l.

18 Q. Mr. Chappel, are you employed?

19 A. Yes.

20 Q. Where are you employed?

21 A. Illinois EPA.

22 Q. And what's your position?

23 A. Unit manager, Leaking Underground
24 Storage Tank Section, Bureau of Land.

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1 **Q. How long have you been employed at**
2 **the Illinois EPA?**

3 A. I think for a total of just over 31
4 years.

5 **Q. Is that continuous?**

6 A. No.

7 **Q. Why not?**

8 A. I spent five years in private
9 practice and then came back to the Agency in '95.

10 **Q. What do you mean by private practice?**

11 A. Consulting, a consulting firm here in
12 Springfield.

13 **Q. Environmental Consulting?**

14 A. Yes.

15 **Q. How much of the time when you've been**
16 **employed at Illinois EPA have you worked with**
17 **leaking underground storage tank issues?**

18 A. From '91 to '94 when I left and then
19 ever since I came back.

20 Do you have a copy of my resume
21 that I gave you? I can tell you exactly from that.
22 I'm not sure of the dates but...

23 **Q. Your estimate is sufficient.**

24 A. Four years plus eight; maybe

1 eleven/twelve years since I came back.

2 **Q. What's your highest level of**
3 **education?**

4 A. Master's.

5 **Q. In what?**

6 A. Thermal and environmental
7 engineering.

8 **Q. Do you have a bachelor's degree then?**

9 A. Yes, I do.

10 **Q. And what is that in?**

11 A. Civil engineering.

12 **Q. Are you a professional engineer?**

13 A. Yes, I am, in Illinois.

14 **Q. All right. In your experience in the**
15 **Leaking Underground Storage Tank Unit, are you**
16 **experienced reviewing budgets?**

17 A. Yes.

18 **Q. Experienced reviewing plans?**

19 A. Yes.

20 **Q. Mr. Chappel, I'm handing you what has**
21 **been previously marked as Exhibit A.**

22 **Do you recognize Exhibit A?**

23 A. Yes. It's the letter I wrote in
24 April of 2012.

1 **Q. So do you recognize Exhibit A then to**
2 **be Illinois EPA's decision letter in this matter?**

3 A. It's the second decision. We had
4 made a previous decision.

5 **Q. Was this the most recent decision**
6 **then?**

7 A. Well, I don't know what's happened
8 since this letter I believe. I believe there's been
9 other activities at this site, and there have been
10 others letters since then but I'm not familiar with
11 them directly.

12 **Q. So Exhibit A then, would this be your**
13 **most recent decision letter?**

14 A. Yes.

15 **Q. Now I'm handing you what has been**
16 **previously marked as Exhibit B.**

17 **Do you recognize Exhibit B?**

18 A. Yes.

19 **Q. And what do you recognize Exhibit B**
20 **to be?**

21 A. This was a letter, yes, a letter in
22 response to our original denial of the plan and
23 budget requesting a reconsideration.

24 **Q. Now, Exhibit A, your letter, was that**

1 **in response to Exhibit B?**

2 A. Yes.

3 **Q. I'm handing you what has been**
4 **previously marked as Exhibit C.**

5 **Do you recognize Exhibit C?**

6 A. Yes.

7 **Q. What do you recognize Exhibit C to**
8 **be?**

9 A. It's the original letter in August of
10 2011 that I sent on the initial submittal for this
11 facility.

12 **Q. Okay. Now I'm handing you what has**
13 **been previously marked as Exhibit D.**

14 **Do you recognize Exhibit D?**

15 A. Yes. This is the original submittal
16 for the facility that was dated May 12 of '11 which
17 resulted in my Exhibit C response.

18 **Q. So Exhibit D gets denied in Exhibit**
19 **C.**

20 A. Correct.

21 **Q. And then the petitioner seeks**
22 **reconsideration in Exhibit B?**

23 A. Correct.

24 **Q. And you reconsider it in Exhibit A**

1 **and modify it?**

2 A. Correct.

3 **Q. Thank you.**

4 I'm handing you what has been
5 **previously marked as Exhibit E.**

6 **Do you recognize Exhibit E?**

7 A. Yes.

8 **Q. What do you recognize Exhibit E to**
9 **be?**

10 A. These are my review notes based on
11 Exhibit B submittal, reconsideration.

12 **Q. Okay. Now, I call your attention to**
13 **the bottom of Exhibit E. There's a portion that**
14 **says analytical borings, soil samples.**

15 **Can you explain what those**
16 **notations mean?**

17 A. You'll see listed the five monitoring
18 wells that were included in the submittal. The DTW
19 stands for depth to water on each of those borings,
20 and they all equal nine feet, and the 3, 2, 3, 2, 2
21 as you read down for BTEX and PNA were soil samples
22 collected below that depth to water in each of those
23 monitoring wells.

24 **Q. Okay. And how many did you determine**

1 **here were taken below that depth to water?**

2 A. 12.

3 **Q. Now, how did you determine the depth**
4 **to water in Exhibit E?**

5 A. It's based on the boring logs that
6 were contained in Exhibit D.

7 **Q. Let me call your attention to Bates**
8 **pages 77 through 82 of Exhibit D.**

9 A. Okay.

10 **Q. Are those the boring logs to which**
11 **you just referred?**

12 A. Yes.

13 **Q. And is there a boring log for each of**
14 **the five monitoring wells?**

15 A. Yes.

16 **Q. Do they all state that the depth well**
17 **drilling is nine feet?**

18 A. Yes.

19 **Q. What does that mean?**

20 A. That's the depth to water while they
21 were drilling the borings, depth to groundwater.

22 **Q. Now, there's a statement afterwards**
23 **depth after drilling.**

24 **What does that mean?**

1 A. I would assume that would be the
2 groundwater level recovered in the boring or well
3 after it was drilled.

4 **Q. So those boring logs I just called**
5 **your attention to, those were the basis for your**
6 **calculation of the depth to water figure of nine**
7 **feet?**

8 A. Correct.

9 **Q. Now I'm going to call your attention**
10 **to page 2 of Exhibit E.**

11 **Now, at the top of that page it**
12 **says drilling and drilling depth. There's five**
13 **lines there.**

14 **What do those notations indicate**
15 **or what do they mean?**

16 A. Once again, the five wells are
17 listed, monitoring well 1 through 5. The total
18 depth, Exhibit D, indicates that they were drilled.
19 It indicates the depth to water on the boring logs
20 and the addition of six feet for the installation of
21 the monitoring well for a total depth of whatever
22 that total is, 75 feet, five wells 15 feet 75 foot
23 depth.

24 **Q. There's a column there that says 26,**

1 **20, 22, 28, 22.**

2 **What do you understand that to**
3 **mean?**

4 A. Those are the depths that the borings
5 in Exhibit E indicate they were drilled to, Exhibit
6 D. I'm sorry. It indicates what those borings were
7 drilled to, total depth.

8 **Q. And in the right-hand corner there's**
9 **a column that says deduct. What did you mean by**
10 **deduct?**

11 A. That's just the total depth they were
12 drilled to minus the 15 feet that was allowed which
13 leaves the deduction of 11 feet on the first one,
14 and then each one is different.

15 **Q. 15 feet allowed. Now, why -- is the**
16 **depth to water figure of nine feet significant in**
17 **your calculation?**

18 A. Yes.

19 **Q. Why?**

20 A. That's the depth to which the borings
21 should have stopped had they not been installed as
22 monitoring wells. If they'd just been soil borings,
23 they would have stopped at the depth to water, nine
24 feet.

1 **Q. Okay. But they were used as**
2 **monitoring wells, correct?**

3 A. Yes.

4 **Q. So could they go deeper than that?**

5 A. I allowed an extra six feet for each
6 for the depth below the water table. Obviously, a
7 well above the water table doesn't do you much good
8 so I allowed six feet below.

9 **Q. How did you arrive at that six foot**
10 **figure?**

11 A. Normally I would have used a five
12 foot number because most screens are ten feet, and
13 we try to allow for five feet above the depth to
14 water and five feet below the depth to water to take
15 into account groundwater fluctuations for the years
16 the wells are there.

17 In this case rather than just
18 allow five feet, I rounded it off and made it six
19 feet to come up with an even 15-foot depth for each
20 boring.

21 **Q. This screen, describe the screen**
22 **you're talking about.**

23 A. The screen is the open portion of a
24 monitoring well where the groundwater infiltrates

1 into the well where you can take your samples.

2 Q. I'm handing you what has been
3 previously marked as Exhibit F. Take a moment to
4 review Exhibit F. Let me know when you're done.

5 A. These are the Stage I requirements in
6 734. I would assume that they're up-to-date.

7 Q. Now I'm going to call your attention
8 to -- did you understand this submittal to be a
9 Stage I submittal?

10 A. No.

11 Q. Why not?

12 A. Because there was no submission of a
13 45-day early action report. I considered this to be
14 an early action report.

15 Q. Okay. But now, this reg in Exhibit
16 F, I'll call your attention to Subpart A(1)(a), the
17 last sentence of that.

18 Do you see that provision?

19 A. Yes.

20 Q. The borings must be advanced through
21 the entire vertical extent of contamination, based
22 upon field observations and field screening for
23 organic vapors, provided that borings must be
24 drilled below the groundwater table only if

1 **site-specific conditions warrant."**

2 **Did you rely upon that in**
3 **determining that drilling should not go below the**
4 **depth of the water?**

5 A. No, I think I relied on the early --
6 well, let me back up.

7 You have to take into account
8 you have early action under 734.210(h) which are
9 supposed to be completed first.

10 Stage I is then completed based
11 on the results of the 210(h) requirements.

12 In this case, we didn't have any
13 210(h) requirements. They weren't put in the
14 report.

15 So that is why my original
16 denial was sent is because the 210(h) requirements
17 had not been complied with.

18 Subsequent to that, there was a
19 phone call between Mr. Green and Hernando
20 Albarracin, the section manager, which resulted in
21 the reconsideration letter of Exhibit B.

22 Hernando had a discussion with
23 me. He said, are there any of these borings or the
24 work that had been done that we could consider

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1 useful as an early action investigation.

2 Now, as I recall, in this case,
3 the early action excavation samples, sidewall and
4 bottom, were not collected. Therefore, in order to
5 consider these borings, I had to look at the 210(h)
6 I believe (2) requirements which were for tanks that
7 remain in place when you take borings around the
8 tanks to determine the entire vertical extent, and I
9 believe those are limited to the depth to water
10 also.

11 So that's what I would have
12 relied on at this time. I did not consider them
13 Stage I.

14 **Q. Okay. It's your understanding that**
15 **the regulations limit drilling to the depth to**
16 **water?**

17 A. During the initial stages, yes.

18 **Q. Okay. And you think that would be**
19 **applicable to Exhibit D that was submitted by the**
20 **petitioner here?**

21 A. Correct.

22 **Q. I'm going to hand you what has been**
23 **previously marked as Exhibit G.**

24 **Do you recognize Exhibit G?**

1 A. Yes. I believe this is the 734
2 requirements allowing for us to increase the maximum
3 payment amounts in subpart (h) on an annual basis.

4 **Q. Did you rely upon Exhibit G for**
5 **determining the appropriate dollar figures that you**
6 **calculated in your notes?**

7 A. I relied on the maximum amounts
8 derived from Exhibit G for the period when the work
9 was conducted.

10 **Q. Okay. Now I'm handing you what has**
11 **previously been marked as Exhibit H.**

12 **For the hearing officer's**
13 **benefit, this is the part that was admitted outside**
14 **of the hearing.**

15 **Mr. Chappel, do you recognize**
16 **Exhibit H?**

17 A. Yes.

18 **Q. What do you recognize Exhibit H to**
19 **be?**

20 A. I believe these are the maximum
21 payment amounts that were in effect at the time the
22 work on the subject site, or when the work was done
23 that I was reviewing.

24 **Q. And so you relied upon those figures**

1 in Exhibit H in making your calculations in Exhibit
2 E, would that be correct, in your notes?

3 A. I believe so, yes.

4 Q. And in reaching your decision in
5 Exhibit A?

6 A. Yes.

7 Q. Now, calling your attention back to
8 Exhibit E, would it be correct then that you
9 determined when you took the depth to water for each
10 of the five monitoring wells as nine feet and then
11 added six feet to allow for the screen that you
12 allowed for each well to be a total of 15 feet deep?

13 A. Correct.

14 Q. And so you allowed for a total of
15 75 feet with the wells?

16 A. Correct.

17 Q. And then from those depths you
18 multiplied out the various costs they were seeking,
19 correct, or reimbursements they were seeking?

20 A. The maximum payment amounts for the
21 period of time for which the work was done which is
22 Exhibit H.

23 Q. So the reduction as to -- I'm sorry.
24 Let me call your attention to the last page of

1 **Exhibit A.**

2 **Do you see the Section 2 Stage I**
3 **modifications?**

4 A. Yes.

5 Q. Now, in both parts 1 and 2 there, I'm
6 sorry, in Part 1, it speaks of 75 feet of drilling.

7 Is that 75 feet you calculated
8 in Exhibit E as being inappropriate for the --

9 A. Yes.

10 Q. And the rates for drilling and the
11 rates for monitoring wells, those were derived from
12 Exhibit H, is that correct?

13 A. Well, the drilling rates and the
14 monitoring rates both came from Exhibit H.

15 Q. And it's your view, it's your
16 understanding of the regulations that you're not
17 supposed to drill below the depth to water?

18 A. Correct.

19 Q. And what is the idea behind that?

20 A. Well, the depth to water, once you
21 have achieved the depth to water, anything below
22 that is a groundwater issue.

23 You have a soil regime, and you
24 have a groundwater regime under the regulations.

1 Once you've reached the depth to groundwater, it
2 becomes a groundwater issue, and 734 specifically
3 indicates there must be some indicator of soil in
4 contact with contaminated groundwater before you
5 even look at the groundwater regime. Therefore, the
6 regulations say during early action, you only drill
7 the borings to a depth to groundwater, or some kind
8 of obstruction if you run into it, but it's the
9 depth to groundwater is where you stop.

10 Those samples then indicate to
11 you whether you have contaminated soil in contact
12 with groundwater.

13 **Q. Now, on page 3 of Exhibit E, it says**
14 **analytical.**

15 **Do you see that?**

16 A. Yes.

17 **Q. And it says BTEX soil, 22 requested,**
18 **10 allowed.**

19 **How did you reach those figures?**

20 A. Well, if you look on that same
21 exhibit, if you look at the first page, page 171 of
22 the record, there was a total of 12 BTEX and PNA
23 samples below nine feet. Out of the five borings,
24 there were a total of 12 that were below that depth

1 of nine foot.

2 So 12 minus 22 gives you the 10
3 that were above the depth to water well drilling.

4 **Q. You mean 22 minus 12?**

5 A. Yeah, 22 minus 12. Ten was what was
6 allowed. Right.

7 **Q. Okay. So the 12 that were -- the 22**
8 **requested included 10 you allowed and 12 that you**
9 **disallowed because it was your conclusion that they**
10 **were below the depth to the water and then**
11 **consequently were inappropriate?**

12 A. Yes.

13 **Q. And that applies to both the BTEX and**
14 **the PNA soil samples, is that correct?**

15 A. Correct.

16 **Q. Now, below that, there's a thing that**
17 **says Encore.**

18 **What is Encore?**

19 A. Encore is just a sampling device that
20 is used to collect the soil sample.

21 **Q. Now, how did -- now, the previous**
22 **soil samples, they requested 22 of each. Here they**
23 **requested 60.**

24 A. Well, I think the 60 is incorrect. I

1 think it may have been 66; that I wrote down the
2 wrong number. I could be wrong.

3 If you look at Exhibit D,
4 page...

5 **Q. How many Encore samples are taken at**
6 **any one time?**

7 A. Well, in most cases in the budgets
8 that I reviewed, most people allow three samples per
9 sampling point, so for each sample you would have
10 three Encore samples that we allow.

11 In this case, I think there
12 were...if you take 22 samples times three Encore
13 samples per site, per location, you end up with 66,
14 not 60.

15 **Q. Okay. And so now you allowed --**

16 A. But the amount allowed was still
17 based on the depth to water samples above the water
18 table which was only ten.

19 **Q. So with BTEX and PNA, you allowed ten**
20 **samples, correct?**

21 A. I allowed ten per location or, I'm
22 sorry, three per location of ten samples which would
23 be 30.

24 **Q. Is that for the Encore samples?**

1 A. Correct.

2 Q. Okay. And is that why there's three
3 times as many allowed there than for BTEX and PNA?

4 A. In terms of the Encore samples, yes.

5 Q. And so relying upon Exhibit H to
6 determine the rates, you calculated that the
7 modifications as set forth in Exhibit A were
8 necessary because you determined that only 75 feet
9 of drilling was appropriate under the regulations,
10 correct?

11 A. I'm sorry. Could you repeat that?

12 Q. Sure.

13 You determined in the course of
14 reviewing Exhibit D in response to Exhibit C that --
15 I'm sorry. Strike that.

16 You determined in reviewing
17 Exhibit D in response to Exhibit B that 75 feet of
18 drilling was appropriate and no more?

19 A. Correct.

20 Q. Based on that determination and the
21 rates set forth in Exhibit H, you made the
22 modifications that you did on the last page of
23 Exhibit A, correct?

24 A. Correct.

1 MR. SIEVERS: I have nothing further.

2 HEARING OFFICER WEBB: Mr. Riffle, do
3 you have anything?

4 MR. RIFFLE: I do.

5 THE WITNESS: I knew I wasn't crazy.
6 I found my 66.

7 MR. RIFFLE: Sir, I just have a few
8 weeks for you.

9

10 CROSS-EXAMINATION

11 BY MR. RIFFLE:

12 Q. Could you explain to me what
13 distinguishes early action from Stage I?

14 A. Early action requirements are spelled
15 out in 734.210(h). The Stage I requirements are
16 additional borings to further define the extent of
17 impact after you've made your early action samples,
18 after you've collected your early action samples.

19 Q. And do I -- strike that.

20 What did you consider this to be
21 at the time of the submittal in this case as to that
22 issue?

23 A. 45-day report early action samples.

24 Q. And why did you come to that

1 **conclusion?**

2 A. Because there had been nothing else
3 submitted on this site. It was the first submittal.

4 **Q. Okay. And Mr. Green testified that**
5 **he wasn't the first consultant on this site, is that**
6 **correct?**

7 A. I wasn't here when Mr. Green
8 testified.

9 **Q. Oh, sorry.**

10 **Was --**

11 A. Oh, I'm sorry. Maybe I was.

12 **Q. Was Midwest the first consultant on**
13 **the site?**

14 A. I don't recall off the top of my
15 head.

16 **Q. This, as far as you knew, was the**
17 **first submittal of anybody with respect to this**
18 **particular incident?**

19 A. Yes.

20 **Q. Okay. Would these samples have been**
21 **appropriate under Stage I site investigation?**

22 A. No.

23 **Q. And why is that?**

24 A. Because Stage I samples are based on

1 the results of your early action samples.

2 Without the results of your
3 early action samples, there is no way you can
4 determine that Stage I is adequate.

5 Everything is built on the early
6 action samples, and then you move to Stage I based
7 on those results. You move to Stage II based on the
8 Stage I results and so on to Stage III if necessary.

9 **Q. Under what circumstances is drilling**
10 **below the groundwater appropriate?**

11 A. During the corrective action phase I
12 see it quite often in order to determine a
13 corrective action remedy for a release. Quite often
14 you need to know the soil characteristics below the
15 water table in order to make those determinations.

16 **Q. During early action, how do you know**
17 **when to stop the drilling?**

18 A. You stop it -- it's indicated in the
19 734 requirements where you stop drilling. It's the
20 depth to water normally or if you run into some kind
21 of obstruction, you're supposed to move and try to
22 drill again, and that's only when tanks remain in
23 place.

24 **Q. You were shown earlier Exhibit E, and**

1 I see that you have it in front of you there.

2 Could you turn to page 2 of that
3 exhibit?

4 A. Okay.

5 Q. My understanding is that the middle
6 column there if you will where it shows 26 feet,
7 that's the depth that monitoring well 1 was actually
8 drilled to, is that correct?

9 A. According to the submittal, yes.

10 Q. Okay. Do you have any reason to
11 believe that those are not accurate as to the depths
12 they were actually drilled?

13 A. No.

14 Q. Okay. So monitoring well 1 was
15 drilled to 26 feet. The other is either 20 or
16 22 feet?

17 A. I believe so, yes.

18 Q. Do you have any idea why they were
19 drilled to that depth?

20 A. No.

21 Q. And it's your testimony that the only
22 time it's appropriate to drill below the groundwater
23 is during the actual remediation phase?

24 A. No. During the investigative phase

1 in subsequent stages, Stage 1, Stage II or Stage
2 III, if you have evidence that contaminated soil is
3 in contact with groundwater or you have other
4 available evidence that groundwater is contaminated,
5 you have to do a groundwater investigation.

6 In order to construct a
7 monitoring well, you obviously have to drill below
8 the depth to the water.

9 **Q. Do projects always proceed in that**
10 **exact sequence of early action, Stage I, Stage II?**

11 A. No.

12 **Q. Under what circumstances is it**
13 **appropriate not to proceed in that fashion?**

14 A. In my opinion, the regulations don't
15 allow for it.

16 **Q. But it does happen?**

17 A. It does happen.

18 **Q. And under what circumstances does it**
19 **happen?**

20 A. Many cases there are submissions very
21 similar to this where the early action samples have
22 not been collected so then we have to go figure out
23 a way to make the sampling requirements fit the
24 conditions that exist at the site today, and in many

1 cases we assume, okay, we didn't get the early
2 action samples from an excavation. We'll,
3 therefore, allow them to do the early action borings
4 as if the tanks are still in place because that's
5 the only thing you can do.

6 **Q. In this case, were the tanks in**
7 **place?**

8 A. I don't recall. I don't think they
9 were. I think they were removed.

10 **Q. And what difference would that have**
11 **made?**

12 A. Well, normally during an excavation
13 and removal of the tanks, you sample the sidewalls
14 and bottoms. That's your early action samples, and
15 as part of that investigation, you're determining
16 whether the groundwater is in contact with
17 contaminated soil.

18 **Q. Do I understand what you're saying**
19 **correctly that oftentimes, early action and Stage I**
20 **really get compressed into one stage if you will?**

21 A. No. The sampling requirements for
22 early action under 210(h)(2) I believe require
23 borings around the tank beds and the piping. That's
24 still early action sampling results for the cases

1 where the lines and tanks remain in place.

2 So in many cases, we take the
3 results of what people call a Stage I and we try to
4 conform those to what is required under the early
5 action requirements for tanks that remain in place
6 and fill in the gaps.

7 Given what we already have
8 around those tanks and lines, do we need more to
9 complete the 210(h)(2) requirements than what we
10 already have or are they adequate.

11 **Q. Okay. I think I understand what**
12 **you're saying. I just want to confirm.**

13 **So you're saying oftentimes**
14 **people will go in and do essentially a Stage I**
15 **without having done the early action and submit it?**

16 A. No.

17 **Q. No?**

18 A. That's not what I said.

19 **Q. Okay.**

20 A. I said what people call a Stage I
21 investigation, we use and conform it, to the extent
22 we can, to satisfy the 210(h) boring requirements as
23 if the tanks remain in place. You still have to
24 satisfy this 210(h) early action sampling

1 requirements.

2 But if the tanks are already
3 gone and they didn't do the proper sampling and
4 analysis, you have to bore around the tanks and
5 lines to try to determine what were those early
6 action conditions in order to determine now where do
7 I look in Stage I to determine the extent of that
8 impact, because if those early action samples are
9 all what we call clean in tier 1, there's no further
10 investigation required. There's no Stage I.

11 **Q. Are you describing a situation where**
12 **somebody has essentially skipped a step that would**
13 **have been required?**

14 A. Correct.

15 **Q. Okay. And what step is it that they**
16 **skipped under that scenario?**

17 A. The 734.210(h) early action
18 requirements.

19 **Q. Okay. So they skipped the early**
20 **action requirements. They've gone right to a next**
21 **step.**

22 **What would that next step be**
23 **called?**

24 A. I assume they call it a Stage I.

1 **Q. Okay.**

2 A. But that's not what it is.

3 **Q. Okay. What is it?**

4 A. It's early action 210(h)(2) boring
5 requirements which I just described where we try to
6 fit what they did into what is required in
7 734.210(h)(2) for tanks that remain in place.

8 So we use the information they
9 submit to the extent we can to satisfy those early
10 action requirements and then build upon that and say
11 the following additional work needs to be done to
12 finish up your early action before you go to Stage
13 I.

14 **Q. And is that your understanding of**
15 **what happened in this particular case?**

16 A. Yes.

17 **Q. Okay. And on a percentage basis,**
18 **could you give just a rough approximation of how**
19 **often that happens?**

20 A. 30 percent.

21 MR. RIFFLE: Okay. I have no other
22 questions.

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REDIRECT EXAMINATION

BY MR. SIEVERS:

Q. In this case when you were reviewing the submittal from the petitioner, did that submittal contain anything in there that identified that there were site specific conditions that warranted drilling below the depth to water?

A. The only two submittals I recall that I reviewed were the Exhibit D original submission, and that didn't have anything to that effect in it, and the request for re-review, which was Exhibit B, and it didn't have any of that information.

Q. So while it's possible to drill below the depth to water if there are site specific conditions, none were called to your attention in the petitioner's submittals?

A. Correct.

Q. There was a need to drill beyond the depth to water though to install the monitoring wells, correct?

A. I allowed it, yes.

Q. Whether this Exhibit D as reconsidered in Exhibit B is considered an early action submittal or a Stage I submittal, is the rule

1 **the same as you understand it, that you only drill**
2 **the depth to water?**

3 A. The early action requirements are.

4 Under the Stage I requirements
5 is where I believe you can make the determination of
6 soil and contact with groundwater and determine that
7 a groundwater investigation is required.

8 **Q. I'm handing you what has been**
9 **previously marked as Exhibit F. I believe you**
10 **looked at that.**

11 **Calling your attention to**
12 **Subpart A(1) (a) , that last sentence of A(1) (a.)?**

13 A. Yes.

14 **Q. Would you need site specific**
15 **conditions under your reading of that provision to**
16 **drill below the depth to groundwater?**

17 A. Yes.

18 MR. SIEVERS: I have nothing further.

19 MR. RIFFLE: Nothing further.

20 HEARING OFFICER WEBB: Okay. Thank
21 you, Mr. Chappel.

22 (Witness excused.)

23 HEARING OFFICER WEBB: Mr. Sievers,
24 do you have anything further to present as part of

1 your case?

2 MR. SIEVERS: I do not.

3 HEARING OFFICER WEBB: Okay.

4 MR. RIFFLE: If I may call Mr. Green
5 again very briefly.

6 HEARING OFFICER WEBB: Okay.

7 Mr. Green, you are still under
8 oath.

9

10 ALLEN GREEN

11 recalled as a witness herein, on behalf of the
12 Petitioner, having been previously sworn on his
13 oath, was examined and testified as follows:

14

15 DIRECT EXAMINATION

16 BY MR. RIFFLE: (On rebuttal)

17 **Q. Mr. Green, you looked at page 2 of**
18 **Exhibit E, and it shows the depths that they were**
19 **actually drilled.**

20 **Do you have an understanding as**
21 **to why those drillings went to those depths?**

22 **A. Based on field observations, we don't**
23 **know where groundwater is at unless it's real**
24 **obvious. Sometimes you come across it, it's real**

1 obvious where it's at.

2 Drilled down, I mean, that's a
3 pretty standard depth in this area or in the area
4 that this took place at, to where we reached a
5 strata that we would assume groundwater would be
6 above that level. It's relatively impermeable
7 strata.

8 **Q. Can you describe in some detail --**
9 **you've observed the drilling process before,**
10 **correct?**

11 A. Yes.

12 **Q. What is the process that's followed?**
13 **I mean, do they stop every six inches or a foot or**
14 **what do they do when they start drilling?**

15 A. In this case, they were using a poly
16 stem auger, and they drill down to the depth that
17 you want to sample. You put a hollow tube
18 basically, a sampling tube inside the auger, and
19 that's driven to a depth normally three feet below
20 the bottom of the auger. That's pulled up, and then
21 that tube is opened, it's split, and you've got a
22 three-foot section of soil there that should be
23 representative of the strata that's below that
24 auger.

1 Then you drill down to the next
2 depth, and you do the same thing down to that depth
3 to where you stop.

4 **Q. When in this process would the**
5 **driller have determined what the depth to the**
6 **groundwater would have been?**

7 A. When they did the first boring,
8 they've got an idea of what the geology is of the
9 site. You're not that far apart when you do the
10 borings to where they can determine what would be
11 the depth that would be reasonable to assume that's
12 where you want to set the bottom of your well.

13 **Q. And I think I understand it, but can**
14 **you just kind of describe how this process would**
15 **have worked in the field? Just kind of describe the**
16 **drilling process, how it would have been set up and**
17 **how this would have been mobilized in the field.**

18 A. The first boring, once they reached
19 the location, they would drill down just below
20 paving gravel, whatever the surface is, push the
21 first spoon is what it's called down below that,
22 pull it up, observe and sample the different strata,
23 and then, based upon that, decide, okay, we're going
24 to go to the next level and dig that down to 26 feet

1 on the first.

2 Then, based upon what they saw
3 in the original borings or the original boring, they
4 said, okay...they still do the same thing with each
5 additional one, but then they have a better idea of
6 where they need to stop when they start looking at
7 the different strata they're collecting.

8 Then, once the boring reaches
9 that depth, the monitoring well casing is dropped
10 down through the auger. It's got a ten-foot
11 section, a screen, which is slotted pipe with solid
12 above up to the top.

13 That's dropped down into the
14 center of the auger, and then, as they bring the
15 auger up, where the screen is at, they pour,
16 basically it's pea gravel, silica sand, dependent on
17 what the strata is, to filter out the sediment,
18 around that as they pull it up.

19 Then they get a couple feet
20 above the screen, then they start backfilling that
21 with bentonite which is basically clay pellets that
22 as it gets wet, it expands and seals. It's almost
23 like Vaseline, and then they do that all the way up
24 to the surface, and then the well on the top is

1 either, if it's a flush mount which means it's flat
2 to the ground, they'll put a cover on that, a seal,
3 so there's no surface water getting into the well,
4 and then a cover, steel manhole basically.

5 If it's above ground, they use a
6 three-foot steel tube that they stick in the ground,
7 a concrete that protects it from being run over or
8 whatever, and then they've got those sampling points
9 they can go back and take samples from.

10 **Q. Do I understand correctly that**
11 **Midwest would have subcontracted the drilling work**
12 **out in this particular case?**

13 A. Yes.

14 **Q. And who did you subcontract that out**
15 **to?**

16 A. Whitney & Associates out of Peoria.

17 **Q. And they have a reputable --**

18 A. They have been doing it a long time.

19 **Q. They're one of the bigger companies**
20 **around?**

21 A. Yes.

22 **Q. So the first one they drilled was to**
23 **26 feet, is that correct?**

24 A. Yes.

1 Q. And the others were at a slightly
2 **lesser depth?**

3 A. Yes.

4 Q. And do you still think those are
5 **appropriate depths to seek?**

6 A. Yes.

7 MR. RIFFLE: Nothing further. Thank
8 you.

9
10 CROSS-EXAMINATION

11 BY MR. SIEVERS: (On rebuttal)

12 Q. Mr. Green, you spoke of putting a
13 **spoon into the ground below the asphalt or the**
14 **gravel and progressively working your way up to**
15 **26 feet, correct?**

16 A. Yes.

17 Q. Now, I think you spoke to those
18 **spoons taking a three-foot sample. Would that be,**
19 **correct?**

20 A. Yes.

21 Q. So the first time it goes down into
22 **the ground, it takes three feet, and then where is**
23 **the next level? How far down does it go the next**
24 **time around?**

1 A. You auger down to where that sample
2 stopped with the auger, and then you put the spoon
3 into the auger, into the center of the auger, and
4 you drive it down below the bottom, so you're
5 basically sampling -- you're only using the auger to
6 get down to the level you want to sample, and then
7 you drill down to where that sample stopped, and
8 then you go down below that.

9 **Q. So in that case, would you be going**
10 **in three-foot increments?**

11 A. Yeah. There are three-foot and there
12 are five-foot spoons. Some of the Geoprobe, which
13 is newer to where they don't use an auger, they
14 basically just kind of drive the tubes down into the
15 ground, pull them up, and then go back down in the
16 hole, some of those have five-foot sampling
17 sections.

18 It just depends on what
19 equipment they're using.

20 **Q. Okay. And at some point, one of**
21 **those samples has water?**

22 A. Well, you're not going to have water.
23 You might have a strata that you look at and say I
24 would assume that there would be -- it's saturated

1 to where you can look at it and say if it's a
2 gravel, sand, something like that and it's wet, you
3 can say chances are there's groundwater in that
4 strata.

5 It's up to the geologist on the
6 site doing the drilling to try to determine where
7 the groundwater would sit until you put in the
8 monitoring wells and let them sit. Then the
9 groundwater comes up to a level that's equilibrium,
10 and then you know where the groundwater table is at.

11 **Q. And on the boring logs -- was a**
12 **geologist on site for the drilling?**

13 A. A geologist or environmental tech,
14 one of the two.

15 **Q. And on your boring logs in Exhibit D,**
16 **the boring logs begin at page 77.**

17 A. Uh-huh.

18 **Q. The lower left-hand corner, it says**
19 **depth while drilling and depth after drilling.**

20 **What do you understand those two**
21 **terms to mean?**

22 A. I'm sorry. I don't see it. What is
23 your --

24 **Q. Lower left-hand corner.**

1 A. Okay.

2 Q. **Depth while drilling, depth after**
3 **drilling. What do you understand those two terms to**
4 **mean?**

5 A. Basically, that's the water level
6 after they drill down, they let it sit, or while
7 they're doing the drilling, you'll get water that
8 will come up and go in the augers, and basically
9 then after the drilling, if it sits for a while open
10 or the well has been installed, then that's what the
11 level is basically certain because it sat for a
12 period of time, say, well, normally it's 24 hours or
13 more. Then that's the level that you know you've
14 got groundwater at after it's sat.

15 Q. **The depth after drilling?**

16 A. Yes.

17 MR. SIEVERS: Okay. Nothing further.

18 MR. RIFFLE: Just real quickly.

19

20 REDIRECT EXAMINATION

21 BY MR. RIFFLE: (On rebuttal)

22 Q. **Is it possible that they drilled down**
23 **to this 20-foot depth without knowing for sure that**
24 **they had groundwater?**

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1 A. Yeah. I mean, there's a lot of times
2 where we'll drill down and think we have groundwater
3 and the wells never will produce water because, you
4 know, there may have been something there that
5 looked like it should have but it doesn't, but we
6 get dry wells all the time.

7 **Q. Is drilling down to about 20 feet a**
8 **fairly standard practice?**

9 A. Yes, standard for that area.

10 MR. RIFFLE: Okay. Nothing further.

11 MR. SIEVERS: Nothing further.

12 HEARING OFFICER WEBB: All right.

13 Thank you, Mr. Green.

14 (Witness excused.)

15 HEARING OFFICER WEBB: Would you like
16 to move to admit these?

17 MR. SIEVERS: I would like to move to
18 admit Exhibits A through H. I believe they're all
19 part of the record.

20 MR. RIFFLE: No objection.

21 HEARING OFFICER WEBB: We'll call
22 these hearing exhibits just to clarify.

23 MR. SIEVERS: Sure.

24 HEARING OFFICER WEBB: So Hearing

1 Exhibits A through H are admitted.

2 (Whereupon Hearing Exhibits A
3 through H were admitted into
4 evidence at this time.)

5 HEARING OFFICER WEBB: The transcript
6 is due by May 2nd and will be posted on the Board's
7 website.

8 The public comment deadline is
9 May 6th. Public comment must be filed in accordance
10 with Section 101.628 of the Board's procedural
11 rules.

12 The petitioner's brief is due by
13 May 27th.

14 Respondent's brief is due by
15 June 25th.

16 Petitioner's reply brief is due
17 by July 9th.

18 Would you like to make any
19 closing argument?

20 MR. RIFFLE: No.

21 HEARING OFFICER WEBB: Would the
22 Agency?

23 MR. SIEVERS: No.

24 HEARING OFFICER WEBB: Okay. At this

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1 time I will conclude the proceedings.

2 We stand adjourned, and I thank
3 you for your participation.

4 (Which were all of the
5 proceedings held at this time.)
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April 22, 2014

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF SANGAMON)

3
4 CERTIFICATE

5 I, Laurel A. Patkes, Certified Shorthand
6 Reporter in and for said County and State, do hereby
7 certify that I reported in shorthand the foregoing
8 proceedings and that the foregoing is a true and
9 correct transcript of my shorthand notes so taken as
10 aforesaid.

11 I further certify that I am in no way
12 associated with or related to any of the parties or
13 attorneys involved herein, nor am I financially
14 interested in this action.

15 Dated April 28, 2014.

16
17
18 Certified Shorthand Reporter
19
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24

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