

ORIGINAL

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

CHATHAM BP, LLC,)
Petitioner,)
-vs-)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB 15-173

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STATE OF ILLINOIS
Pollution Control Board

Hearing held, pursuant to notice, on Wednesday,
May 27, 2015, at the hour of 10:00 a.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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BOARD MEMBERS:

DEANNA GLOSSER, Chairman
GERALD KEENAN

APPEARANCES:

WILLIAM D. INGERSOLL
BROWN, HAY & STEPHENS
205 S. Fifth
Suite 700
Springfield, Illinois 62701

appearing on behalf of
Petitioner;

SCOTT B. SIEVERS
IEPA
Assistant Counsel
Division of Legal Counsel
1021 N. Grand Ave. East
Springfield, Illinois 62794

appearing on behalf of
Respondent.

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
HARRY CHAPPEL				
By Mr. Ingersoll	17		27	
By Mr. Sievers		20		
ERIC KUHLMAN				
By Mr. Ingersoll	30			
By Mr. Sievers		36		
CAROL ROWE				
By Mr. Sievers	42			

EXHIBITS

	IDENTIFIED	ADMITTED
Exhibit A	45	--
Exhibit B	57	--

PROCEEDINGS

1
2 HEARING OFFICER WEBB: Good morning.
3 My name is Carol Webb, and this is the hearing for
4 PCB 15-173, Chatham BP, LLC versus IEPA. It is
5 May 27, 2015, and we are beginning at 10 o'clock
6 a.m.

7 I would like to welcome today
8 Chairman Deanna Glosser and Board Member Gerald
9 Keenan, and there are no members of the public
10 present.

11 At issue in this case is the
12 Agency's rejection of petitioner's Stage II site
13 investigation plan and budget for a facility located
14 at 300 North Main Street in Chatham, Sangamon
15 County. The decision deadline is July 23rd.

16 The Pollution Control Board
17 members will make the final decision in this case.

18 My purpose is to conduct the
19 hearing in a neutral and orderly manner so that we
20 have a clear record of the proceedings.

21 This hearing was noticed
22 pursuant to the Act and the Board's rules and will
23 be conducted pursuant to Sections 101.600 through
24 101.632 of the Board's procedural rules.

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

MR. INGERSOLL: William D. Ingersoll, Brown, Hay & Stephens, on behalf of petitioner, Chatham BP, LLC.

MR. SIEVERS: Scott Sievers on behalf of the respondent, Illinois Environmental Protection Agency.

HEARING OFFICER WEBB: Thank you.

There are some preliminary matters to discuss before we begin.

First I would like to rule on a couple of outstanding motions.

Respondent's motion for leave to file the record instanter is granted. The motion for extension in time is therefore moot, and petitioner's motion to quash is moot as respondent has withdrawn the notice to appear.

Are there any other preliminary matters to discuss on the record today?

MR. INGERSOLL: I would like to move to strike the document located in the administrative record at pages 136 to 138 which my secretary seemed

1 to have missed.

2 Perhaps it's in this version.

3 HEARING OFFICER WEBB: The March 27th
4 letter?

5 MR. INGERSOLL: Correct.

6 HEARING OFFICER WEBB: From the
7 Agency to Mr. Amar?

8 MR. INGERSOLL: Yes.

9 First of all, this letter was
10 obviously not relied upon for the February 25
11 decision that is the subject of this appeal. It
12 didn't exist at the time. The Board's rules at
13 Section 105.410(b)(4) contains a requirement that
14 the record include information that the Agency
15 relied upon in making its determination.

16 That would say that the
17 information must have existed prior to the decision.
18 This letter was not.

19 Longstanding Board precedent has
20 held it would not consider evidence not before the
21 Agency prior to its final determination.

22 I would ask that the Board refer
23 to its decisions in the Clarendon Hills PCB 93-55
24 and Kathe's Auto Service PCB 95-43 cases for

1 example.

2 Further, the Agency does not
3 have the authority to reconsider its final decision.
4 This March 27th letter seems to be a change to the
5 February 25th letter. It would be a correction but
6 that's not something that's authorized. It's
7 another proposition with lengthy and consistent
8 precedent. The Board's case is considering this
9 issue.

10 All cite back to the Reichhold
11 Chemicals case, 204 Ill. App 3d 674 in 1990.

12 Board decisions following this
13 precedent extend clear into 2014, and some samples
14 are Clinton County Oil, PCB 91-163 in 1992, Tolles
15 Realty, PCB 93-124 in 1997, and recently in the
16 Estate of Slightom, PCB 11-25 in 2014.

17 Therefore, Chatham BP requests
18 that this letter dated March 27, 2015 found at pages
19 136 through 138 of the administrative record on file
20 be stricken from the record.

21 MR. SIEVERS: Thank you.

22 May 8th, that's when the record
23 was filed, May 8th. It's May 27th now. Nineteen
24 days the record has been on file, and this is the

1 first time it's brought up. If there's something
2 that's inappropriate in Chatham BP's mind in that
3 record, clearly, Mr. Ingersoll is reading from
4 something and he could have filed a motion.
5 Obviously, we could have addressed that long before
6 this hearing.

7 Section 105.410 of the rules
8 governing the Agency record, Subpart (b) (2) says,
9 one of the things that the record must include,
10 correspondence with the petitioner and any documents
11 or materials submitted by the petitioner to the
12 Agency related to the plan or budget submittal or
13 other request.

14 Correspondence with the
15 petitioner. That's correspondence with the
16 petitioner.

17 Chatham BP doesn't want this
18 Board to see that because it shows that we actually
19 fixed the problem before they ever filed the
20 petition for review.

21 That's really an interesting
22 problem here. What's the hearing about. The
23 problem was resolved before the petition was ever
24 filed. They don't want you to know that. That's a

1 fact.

2 This Board can give it the
3 weight it wishes, but we submit that under the
4 provisions of the regulations, that letter should be
5 in the record.

6 Further, we know from the 90-day
7 extension of time that we can seek that a 90-day
8 extension of time is something that gives the
9 opportunity for the Board or for the Agency to
10 reconsider its decision.

11 Now, in this case we're not
12 really even reconsidering a decision. As this Board
13 will learn in the course of this hearing, we are
14 simply effectuating this Board's decision. We
15 screwed up. The February 25, 2015 letter, we
16 screwed up, and we fixed it on March 27th. That's
17 the letter he doesn't want you to see, but under the
18 regulations, it should be in the record. The Board
19 should know that we fixed it.

20 This hearing is moot, but
21 nonetheless, the motion here is trying to keep that
22 from the Board's knowledge.

23 We would ask the motion to be
24 denied.

1 HEARING OFFICER WEBB: I'm going to
2 deny the motion.

3 There have been some limited
4 circumstances where items that were not specifically
5 in front of the Agency, documents that were not in
6 front of the Agency have been held admissible by the
7 Board such as if it's information that the Agency
8 should have had or information that explains
9 something in the record.

10 I can't be certain right now
11 without having taken a longer look that this is
12 necessarily something that wouldn't fall within the
13 scope of that so I'm going to deny the motion to
14 strike.

15 Okay. Are there any other
16 preliminary matters anyone would like to bring up?

17 Okay. Would petitioner like to
18 make an opening statement?

19 MR. INGERSOLL: Yes, I would.

20 I find it difficult to
21 comprehend that the Agency is contending that it is
22 okay to fix a decision that was a mistake, a final
23 decision, by issuing a new decision, reconsideration
24 of its prior decision that had been held outside the

1 Agency's authority since Reichhold in 1990. That's
2 been the law for the Board.

3 It would be nice if the parties
4 could get together and fashion a newer letter, a
5 replacement letter for something that was a mistake,
6 but there's no authority to do that at this point in
7 time, and I think even the Board pointed out
8 recently that if that's something that needs to be
9 done, it should be taken up with the legislature,
10 not as a matter of trying to get Board precedent on
11 that point.

12 And I would concur, it would be
13 nice if we could fix mistakes in such a manner if it
14 were authorized, but it seems like the only way that
15 we have to fix a mistake is to file a petition and
16 have the Board actually reverse the mistaken
17 decision.

18 It's unfortunate. It's a lot of
19 work. So I appreciate the candor from the Agency
20 that this February 25 letter appears to have been a
21 mistake, but we'll try to plow through it and see if
22 we can understand how it came to be.

23 HEARING OFFICER WEBB: Thank you.

24 Mr. Sievers, would you like to

1 make any opening statement?

2 MR. SIEVERS: I would.

3 We did screw up. There's no
4 question about it. The February 25, 2015 letter was
5 a screw-up. It was an error on our part, but the
6 evidence here today will show that when we sent out
7 the February 25, 2015 letter that we screwed up, and
8 the way we did screw up was that we had this Board's
9 decision from December 18, 2014, and the letter was
10 trying to effectuate that decision. We bungled it,
11 okay?

12 But the fact of the matter is,
13 the Board had fully reversed the Agency on previous
14 matters in the previous Chatham BP litigation. We'd
15 been fully reversed on it, but the letter we sent
16 out February 25th didn't recognize that it was a
17 mistake. It only was aware or acknowledged the
18 reversal of the drum disposal costs in the Board's
19 last substantive decision in the underlying Chatham
20 BP case.

21 Very smart people at the Agency,
22 and several of them, were awaiting on this, and this
23 letter got out, and it was a mistake. Nonetheless,
24 it got out.

1 But the evidence here will show
2 that when the error was brought to our attention, we
3 fixed the problem. We fixed the problem. Most
4 importantly, we fixed it before the petition for
5 review was filed in this case.

6 At the time the petition for
7 review was filed in this case, it was moot.

8 What relief can you get? None.
9 We've already provided it to them. That's the
10 thing. In this situation, it was resolved before.

11 Now, maybe he can seek attorneys
12 fees and costs for bringing litigation that was
13 completely and utterly unnecessary, and maybe he'll
14 try to do that, but in this particular case, the
15 Agency acknowledged its mistake, remedied its
16 mistake.

17 Now, why are we here then?
18 Well, there's a contention, of course, that we have
19 no authority whatsoever to reconsider decisions.

20 Well, the fact is we reconsider decisions at time.
21 Most people after we fix the mistake don't go ahead
22 and sue us. They are happy with the remedy.

23 You know, if we allow everything
24 to be petitioned for review -- we make a lot of

1 mistakes and yet any entity with human beings in it
2 does -- if every one has to be appealed to the
3 Board, there will be quite a bit of litigation going
4 on here.

5 The fact of the matter is we
6 know from case law concerning Section 105.406
7 concerning the extensions of time to file the
8 petition for review that that period allows for
9 reconsideration decisions.

10 I'm not saying they filed that
11 here. They could have filed that here. They chose
12 not to. They chose to pull the trigger and file a
13 petition for review.

14 But the Agency does make, well,
15 reconsideration to try to fix its mistakes, but in
16 reality, this wasn't even the Agency's decision to
17 make. This Board had already decided. This Board
18 had issued its orders. We were simply sending out a
19 letter that was trying to effectuate the Board's
20 order, and we screwed up, but when it was brought to
21 our attention, we sent out a letter that correctly
22 reflected this Board's decision and allowed our
23 mechanism to go forward and say, yeah, we approved
24 the plan, and that's what we've done here.

1 So the question is, why are we
2 here today when the relief requested has already
3 been provided by the Agency.

4 Is it so the petitioner can
5 grind an ax against personnel of the Agency? Is it
6 here so that the counsel can seek attorney's fees
7 that are generated in litigation that only exists to
8 generate attorney's fees?

9 That's the question we have here
10 today. Why are we here since the remedy has already
11 been provided because we know one thing. It's not
12 because it's trying to fix a mistake. That mistake
13 has been fixed.

14 Thank you.

15 HEARING OFFICER WEBB: All right.

16 Mr. Ingersoll, you may call your
17 first witness?

18 MR. SIEVERS: Your Honor, at this
19 time we move to exclude witnesses.

20 HEARING OFFICER WEBB: Okay. All of
21 them or --

22 MR. SIEVERS: Yes.

23 HEARING OFFICER WEBB: Denied. I
24 mean, we're already here. I don't know who's going

1 to say what.

2 So, Mr. Ingersoll, you may call
3 your first witness.

4 I'd like to have the witnesses
5 come up here, please, if that's okay.

6 MR. INGERSOLL: Gary Chappel, please.

7 HEARING OFFICER WEBB: Mr. Chappel,
8 can you please have a seat up here.

9 MR. INGERSOLL: And I will note that
10 Mr. Chappel is retiring in I think two more days.
11 Is that correct?

12 MR. CHAPPEL: Yes, sir.

13 HEARING OFFICER WEBB:
14 Congratulations.

15 MR. SIEVERS: Congratulations.

16 MR. CHAPPEL: Thank you.

17 HEARING OFFICER WEBB: Counsel may
18 approach as needed.

19 Would the court reporter please
20 swear in the witness?

21 (Whereupon the witness was sworn
22 by the reporter.)

23 HEARING OFFICER WEBB: Please state
24 your name and spell it for the court reporter.

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MR. CHAPPEL: Harry Chappel
(C-h-a-p-p-e-l).

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

DIRECT EXAMINATION

BY MR. INGERSOLL:

Q. Would you refer to page 120? There's
an e-mail from you to Eric Goldman in which you
discuss you don't think we should be sending a
payment approval letter.

I'm trying to read between the
lines, and it seems like there was some confusion
about payment approval. It was payment approval,
the appropriate letter, versus budget approval.

MR. SIEVERS: Objection. Compound
and vague.

HEARING OFFICER WEBB: I'll let you
restate that.

Q. BY MR. INGERSOLL: Was there some
confusion in your mind about whether the Agency was

1 to be sending a payment approval letter or a budget
2 approval letter?

3 **A. Our responsibilities in my unit**
4 **involve the approval of budgets. We don't issue**
5 **approval of payment reimbursement vouchers or actual**
6 **payment. We just approve the budgets.**

7 **Now, from the e-mails, it looked**
8 **to me like we were talking about issuing a payment**
9 **approval letter I guess, but from my and Eric's**
10 **standpoint, all we had authority to do was to**
11 **approve the budget in accordance with the Board**
12 **order that was issued.**

13 **Q. Okay. And you said from e-mails you**
14 **got the impression that people wanted you to issue a**
15 **payment approval letter?**

16 **MR. SIEVERS: Objection.**
17 **Mischaracterizes the testimony. He didn't say he**
18 **got the impression they wanted him to issue**
19 **something.**

20 **MR. INGERSOLL: Could you read back**
21 **what he did say?**

22 **HEARING OFFICER WEBB: Well, I didn't**
23 **hear the objection.**

24 **MR. SIEVERS: I'm sorry. The**

1 objection was there was a mischaracterization of the
2 testimony.

3 The witness did not testify that
4 he was under the impression that he was supposed to
5 be issuing a payment letter, that people were giving
6 him the impression.

7 HEARING OFFICER WEBB: Okay. Would
8 you read back the witness's statement for
9 Mr. Ingersoll?

10 (The reporter read back the
11 requested portion of the record.)

12 Q. BY MR. INGERSOLL: Okay. So some
13 e-mail that you had seen apparently showed an intent
14 to issue a payment approval letter?

15 A. It looked, as best I can recall, and
16 most of it is from the e-mail, it looked like
17 someone was asking Eric to issue a payment approval
18 letter.

19 That is not Eric's job. It's
20 not my job.

21 So my only comment in this
22 e-mail was, we can't issue a reimbursement approval
23 letter. We can only issue a letter revising our
24 original decision in accordance with the Board's

1 **decision on the drum cost.**

2 **And that's what we did.**

3 Q. Okay. Do you think that -- do you
4 believe that the final version of the February 25
5 letter was a mistake?

6 **A. I'd have to look at the February 25**
7 **letter.**

8 MR. SIEVERS: It's 130.

9 **A. Yes, it was an error.**

10 MR. INGERSOLL: Okay. Thank you.

11 I have nothing further.

12 HEARING OFFICER WEBB: Mr. Sievers?

13 MR. SIEVERS: Permission to go beyond
14 the scope for the sake of expediency?

15 HEARING OFFICER WEBB: Granted.

16

17 **CROSS-EXAMINATION**

18 **BY MR. SIEVERS:**

19 Q. Mr. Chappel, are you employed?

20 **A. Yes, I am.**

21 Q. Where are you employed?

22 **A. Illinois Environmental Protection**
23 **Agency.**

24 Q. What's your title?

1 **A. Unit manager.**

2 **Q. Which unit?**

3 **A. Leaking Underground Storage Tank**
4 **Section, Bureau of Land.**

5 **Q. What do your duties include, in a**
6 **nutshell?**

7 **A. I manage a group of nine people**
8 **involved in the review and approval or denial for**
9 **compliance with the underground storage tank**
10 **regulations in Illinois.**

11 **Q. Who is Brian Bauer?**

12 **A. Brian Bauer is one of my employees.**

13 **Q. Who is Eric Kuhlman?**

14 **A. One of my employees.**

15 **Q. Do you supervise both?**

16 **A. Yes.**

17 **Q. Are you familiar with the Chatham BP**
18 **site?**

19 **A. Yes, in general.**

20 **Q. Today as you sit here, are you aware**
21 **that there was previous litigation before the Board**
22 **concerning the Chatham BP site?**

23 **A. Yes.**

24 **Q. In that first litigation, did you**

1 testify?

2 **A. No.**

3 Q. Were you involved in that litigation
4 in any way?

5 **A. No.**

6 Q. I'm going to call your attention to
7 page 112 of the packet you have there.

8 For the record, I'm referring to
9 the administrative record I provided to
10 Mr. Ingersoll.

11 I want you to look at pages 112,
12 113, 114 and 115.

13 Do you recognize those pages?

14 **A. Yes.**

15 Q. Do you recognize that to be a
16 Pollution Control Board order?

17 **A. Yes.**

18 Q. And was that order, December 18,
19 2014, the subject of subsequent discussion with Eric
20 Kuhlman?

21 **A. Yes.**

22 Q. Did your discussion occur by e-mail?

23 **A. I don't recall if we actually had any**
24 **conversations in my office. I think most of it was**

1 **by e-mail.**

2 Q. I'll call your attention to pages 116
3 through 126 of the record.

4 Would you briefly review those?

5 **A. 116 through what?**

6 Q. 126.

7 **A. Yes. That looks like e-mails between**
8 **various employees.**

9 Q. And those e-mails concern the
10 implementation of the December 18, 2014 PCB order,
11 correct?

12 **A. Correct.**

13 Q. You instructed Eric Kuhlman to take
14 the May 28, 2013 Illinois EPA letter that was the
15 subject of the previous Chatham BP litigation and
16 revise it, isn't that right?

17 **A. Yes.**

18 Q. And the instruction you had is set
19 forth on page 116 of those e-mails, isn't that
20 right?

21 **A. Yes.**

22 Q. You suggested just revising it to
23 include or to change the way it addressed the drum
24 disposal costs?

1 **A. Right, the subject of the Board order**
2 **I saw.**

3 Q. At that time, January 29, 2015, were
4 you aware that the Board had fully reversed Illinois
5 EPA's May 28, 2013 decision letter?

6 **A. No.**

7 Q. Had you been aware of that, would
8 your instructions have been different?

9 **A. Yes.**

10 Q. I'll call your attention to page 130
11 of the record, pages 130 through 135.

12 Do you recognize that document?

13 **A. Yes. I believe this is the letter I**
14 **signed changing or approving the drum disposal costs**
15 **based on the Board order.**

16 Q. And that was a letter that was
17 generated as a result of your instruction to Eric
18 Kuhlman as set forth in those e-mails?

19 **A. Correct.**

20 Q. And that letter was mistaken, isn't
21 that correct?

22 **A. Correct.**

23 Q. Now, the mistake in that February 25,
24 2015 letter, that was subsequently brought to your

1 attention?

2 **A. Yes.**

3 Q. Did you work to fix that mistake?

4 **A. Yes.**

5 Q. Did you understand that you had fixed
6 the mistake?

7 **A. Yes.**

8 Q. I'll call your attention to page 136
9 of the record, 136 through page 138.

10 Do you recognize that document?

11 **A. Yes. It's a subsequent letter I**
12 **believe I signed, yes.**

13 Q. Is that the letter that you
14 understood fixed the mistake of the February 25,
15 2015 letter?

16 **A. Correct.**

17 Q. That's dated March 27, 2015, is that
18 right?

19 **A. Yes, sir.**

20 Q. Is it your understanding that letter
21 would have been sent out on or about that date?

22 **A. Yes.**

23 Q. Are you familiar with a site known as
24 Scenic Ridge Plaza?

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A. In general, yes.

Q. Who is or was Jackie Sullivan?

A. He was a leaking tank owner-operator.

Q. And he died in 2012?

A. I believe -- I'm not sure of the exact date, but yes, I believe he did.

Q. Do you have any personal bias toward or ax to grind against Chatham BP?

A. No.

Q. Do you have any reason to believe that Eric Kuhlman does?

A. No.

Q. Do you have any personal bias toward or ax to grind towards CW3M?

A. No.

Q. Do you have any reason to believe Eric Kuhlman does?

A. No.

MR. SIEVERS: I have nothing further of this witness.

HEARING OFFICER WEBB: Mr. Ingersoll, do you have anything further of this witness?

MR. INGERSOLL: Yes, please.

REDIRECT EXAMINATION

BY MR. INGERSOLL:

Q. The letter that starts at page 136 of the record, it has a date of March 27, 2015, and I think counsel has implicated in argument that the petitioner had this document and filed a petition despite having this document.

Do you know when this letter was delivered?

A. No, I don't. I don't have the postmark here.

It was sent certified mail so there should be a certified mail receipt, but I don't see it here.

Q. Well, March 27th was on a Friday.

Do you think that this was delivered before Monday?

A. I would have no way of knowing. I don't know.

Q. The Agency does, in fact, have that green card in its files, does it not?

A. I don't know. I haven't looked for it. It should have. It's certified mail.

MR. INGERSOLL: Given counsel's

1 arguments, it seems like the date of delivery would
2 be somewhat important to his contention that the
3 petitioner filed a petition in spite of an Agency
4 effort to fix the problem.

5 MR. SIEVERS: Is this a question for
6 the witness?

7 MR. INGERSOLL: It's just a comment.

8 MR. SIEVERS: I object to it and move
9 to strike it.

10 HEARING OFFICER WEBB: Please reserve
11 comments for post-hearing briefs. Let's just stick
12 to witness questions, please.

13 MR. INGERSOLL: How about this.
14 Could we request one of the EPA's employees to go to
15 the file room, which is right over on this floor,
16 and locate that green card?

17 MR. SIEVERS: I certainly object to
18 that. If there was a concern about what was in the
19 record, the record was filed May 8th. He certainly
20 could have requested that and could have moved for
21 production of some document like that.

22 This is the first we're hearing
23 about this. We even had preliminary motions
24 beforehand and that wasn't raised.

1 HEARING OFFICER WEBB: I'm going to
2 deny that request.

3 MR. SIEVERS: Can we go off the
4 record for a moment?

5 HEARING OFFICER WEBB: Yes.

6 We're off the record.

7 (Whereupon an off-the-record
8 discussion transpired at this
9 time.)

10 HEARING OFFICER WEBB: Mr. Ingersoll,
11 do you have any further questions for this witness?

12 MR. INGERSOLL: No, I don't believe
13 so. Thank you.

14 HEARING OFFICER WEBB: Do you have
15 anything further, Mr. Sievers?

16 MR. SIEVERS: I don't.

17 HEARING OFFICER WEBB: Thank you,
18 Mr. Chappel.

19 (Witness excused.)

20 HEARING OFFICER WEBB: Mr. Ingersoll,
21 you may call your next witness.

22 MR. INGERSOLL: I would like to call
23 Eric Kuhlman.

24 HEARING OFFICER WEBB: Would you have

1 a seat up here, please, Mr. Kuhlman?

2 Please state your name and spell
3 it for the court reporter.

4 MR. KUHLMAN: Eric Kuhlman; E-r-i-c
5 K-u-h-l-m-a-n.

6 HEARING OFFICER WEBB: And would the
7 court reporter please swear in the witness?

8 (Whereupon the witness was sworn
9 by the reporter.)

10

11

ERIC KUHLMAN

12

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

15

16

DIRECT EXAMINATION

17

BY MR. INGERSOLL:

18

Q. Mr. Kuhlman, what's your position
19 with the Illinois EPA?

20

**A. I'm an Environmental Protection
21 Engineer III.**

22

Q. And what is your responsibility
23 relative to the Chatham BP site?

24

A. I review the technical documentation

1 **submitted for that site.**

2 Q. Okay. So you're the project
3 reviewer, and you then provide your recommendation
4 to Mr. Chappel?

5 **A. Yes, I do.**

6 Q. And Mr. Chappel is the one that ends
7 up signing the letters?

8 **A. He does.**

9 Q. Okay. Would you look at the record,
10 at the e-mail. There's several e-mail strings
11 starting on page 116, and there are duplicates
12 because I assume that they were printed from
13 different persons' e-mail accounts.

14 On January 28, 2015 both at
15 2:49 p.m. and at 4:28 p.m., you were asking for an
16 example of how a letter should look.

17 I assume the letter that you
18 want would be writing a response or decision letter
19 to Chatham BP?

20 **A. Yes.**

21 Q. And in response to that, those
22 inquiries, did anybody send you a letter?

23 **A. Yes.**

24 Q. How?

1 **A. Through e-mail, PDF file.**

2 Q. Which one of these e-mails is it
3 attached to?

4 **A. I don't know that offhand.**

5 Q. I know that none of these e-mails
6 have an indication from Outlook that it has an
7 attachment unless the fact that there's an
8 attachment is covered by the attorney-client claim.

9 In the certification of the
10 record that you signed, pages 127 to 129, you
11 identify that document in your index as a
12 January 20, 2015 Illinois EPA draft letter.

13 So who drafted this draft?

14 MR. SIEVERS: Objection. Vague.

15 MR. INGERSOLL: What?

16 MR. SIEVERS: Are you referring to
17 the document on page 127?

18 MR. INGERSOLL: Yes.

19 HEARING OFFICER WEBB: Does yours
20 say -- should it say draft?

21 MR. INGERSOLL: It doesn't say draft
22 on the document.

23 HEARING OFFICER WEBB: Okay. That's
24 all.

1 MR. INGERSOLL: It says draft on his
2 index that's on the front page. That's how he
3 describes it is an index.

4 THE WITNESS: I'm sorry. Could you
5 repeat the question?

6 MR. INGERSOLL: Yes.

7 Q. Who drafted this letter, this draft
8 letter? Who prepared it?

9 A. I did.

10 Q. And how do you know that this letter
11 should be dated January 20th?

12 A. Which letter are you referring to?

13 Q. This letter at page 127 of the record
14 that you describe in the index as a January 20, 2015
15 draft letter.

16 A. Offhand, I don't know.

17 Q. Just taking a quick look through the
18 e-mails that are in the record, the only e-mails
19 from you on January 20th are either empty or they
20 have -- they're empty by way of a complete redaction
21 as attorney-client privilege.

22 MR. SIEVERS: I move to strike
23 counsel's testimony.

24 HEARING OFFICER WEBB: Yeah.

1 Mr. Ingersoll, I'm getting a little lost myself.

2 MR. INGERSOLL: Okay.

3 Q. Given, Mr. Kuhlman, that we can't
4 find any January 20th e-mail that seems to provide a
5 draft letter, which e-mail was this attached to?

6 MR. SIEVERS: Objection.

7 Argumentative. Compound. Complex. And also, the
8 record actually shows there is a January 28th
9 e-mail.

10 MR. INGERSOLL: There's several
11 January 28th e-mails. They just have
12 attorney-client privilege and no information.

13 MR. SIEVERS: That doesn't mean
14 there's not something there. That means it's been
15 redacted.

16 MR. INGERSOLL: I don't know how you
17 can -- I will take it up in briefing. I will raise
18 the issue of having attorney-client claimed
19 information be documentary support for an Agency
20 decision.

21 Q. Mr. Kuhlman, since you are signatory
22 on the certification, does that mean that you
23 believe that these are the only documents that were
24 used in the consideration of this letter?

1 MR. SIEVERS: Objection. Vague.

2 MR. INGERSOLL: I'll try to rephrase.

3 Q. Mr. Kuhlman, you prepared the record,
4 did you not?

5 A. I did.

6 Q. You certified the items that were in
7 there?

8 A. I did.

9 Q. Do you intend that that certification
10 indicate that those are the documents that you
11 reviewed?

12 A. To the best of my knowledge, they
13 are.

14 Q. Okay. Did you realize that there are
15 only one of the Board orders from PCB 14-1 in this
16 record?

17 A. Yes.

18 Q. Please refer to this one Board order
19 that you put in the record where on pages 112, 113
20 and 115, the Board's order of January 9, 2014 is
21 mentioned as even found in the ultimate order.

22 Did you notice that there were
23 references to January 9, 2014?

24 A. Is that on page 15?

1 Q. It's on pages 112, 113, 115.

2 A. **No, I did not.**

3 MR. INGERSOLL: Okay. No further
4 questions.

5 HEARING OFFICER WEBB: Mr. Sievers?

6 MR. SIEVERS: Permission to go beyond
7 the scope?

8 HEARING OFFICER WEBB: Granted.

9

10 CROSS-EXAMINATION

11 BY MR. SIEVERS:

12 Q. Mr. Kuhlman, you're employed at the
13 Illinois EPA?

14 A. **Yes.**

15 Q. In the LUST Section?

16 A. **Correct.**

17 Q. And you're the project manager of the
18 Chatham BP site, is that right?

19 A. **I am.**

20 Q. I call your attention to page 130 of
21 the record, 130 through 135.

22 Do you recognize that document?

23 A. **I do.**

24 Q. Is that document the February 25,

1 2015 letter that is the subject of this appeal?

2 **A. It is.**

3 Q. Now, who wrote that document?

4 **A. I did.**

5 Q. Now, who is Brian Bauer?

6 **A. Brian Bauer is a colleague. He works**
7 **in LUST claims.**

8 Q. Harry Chappel is your supervisor?

9 **A. Yes.**

10 Q. He gives you instructions and
11 directions at times?

12 **A. He does.**

13 Q. And when he does, you're supposed to
14 follow them?

15 **A. Correct.**

16 Q. Did he give you instructions or
17 directions that resulted in this February 15, 2015
18 letter?

19 **A. I'm sure he did.**

20 Q. I call your attention to page 116 of
21 the record.

22 On pages 116 through 126 of the
23 record, those are e-mails, is that right?

24 **A. Yes.**

1 Q. They concern what to do about the
2 Board's December 18, 2014 letter or order, isn't
3 that right?

4 **A. Yes.**

5 Q. And on January 29th, your supervisor,
6 Harry Chappel, gave you instructions on what to do,
7 isn't that right?

8 **A. He did.**

9 Q. Would it be accurate to say then that
10 what you did was you took the May 28, 2013 decision
11 letter that was the subject of the previous Chatham
12 BP litigation, and the only thing you changed in
13 issuing it for the February 25, 2015 letter was the
14 drum disposal costs and the date?

15 **A. Yes.**

16 Q. And that was at the direction of
17 Mr. Chappel?

18 **A. Yes, it was.**

19 Q. Now, you were aware at the time this
20 letter was issued that the Board had fully reversed
21 the Agency in that previous litigation with Chatham
22 BP, correct?

23 **A. I was.**

24 Q. Did you believe that Harry Chappel

1 was aware of that as well?

2 **A. I thought so at the time.**

3 Q. Did you later learn that that was not
4 the case?

5 **A. I did.**

6 Q. At some point, did you learn that the
7 February 25, 2015 letter was a mistake?

8 **A. Yes, I did.**

9 Q. At that point, did you agree to work
10 to fix that mistake?

11 **A. Yes.**

12 Q. And did you fix that mistake?

13 **A. I believe so.**

14 Q. I call your attention to page 136 of
15 the record, 136 through 138.

16 Do you recognize that document?

17 **A. I do.**

18 Q. Is that a letter that you understood
19 aimed to remedy the mistake of the February 25, 2015
20 letter?

21 **A. Yes.**

22 Q. Now, who wrote that letter?

23 **A. Brian Bauer.**

24 Q. Do you have any personal bias toward

1 or ax to grind against Chatham BP?

2 **A. No.**

3 Q. Do you have any reason to believe
4 that Harry Chappel does?

5 **A. No.**

6 Q. Do you have any personal bias toward
7 or ax to grind against CW3M?

8 **A. No.**

9 Q. Do you have any reason to believe
10 that Harry Chappel does?

11 **A. No.**

12 Q. Now, you certified the record in this
13 case.

14 When you prepared the
15 February 25, 2015 letter, did you review the
16 entirety of the record for the previous Chatham BP
17 litigation?

18 **A. No.**

19 Q. Was the December 18, 2014 Board order
20 essentially what prompted the February 25, 2015
21 letter?

22 **A. It was.**

23 Q. If there's a certified mail receipt
24 out there in the possession of the Illinois EPA that

1 shows when Chatham BP received the March 27, 2015
2 letter, are you aware of that?

3 **A. No, I'm not.**

4 Q. You don't deny it might exist.

5 **A. I'm sure it does.**

6 Q. And at the time you prepared the
7 certification, were you aware -- you thought this
8 certification was complete to the best of your
9 knowledge and ability?

10 **A. I did.**

11 MR. SIEVERS: I have nothing further.

12 HEARING OFFICER WEBB: Okay.

13 Mr. Ingersoll, do you have
14 anything further for this witness?

15 MR. INGERSOLL: No.

16 HEARING OFFICER WEBB: Thank you.

17 (Witness excused.)

18 HEARING OFFICER WEBB: Mr. Ingersoll,
19 you may call your next witness.

20 MR. INGERSOLL: I have no more
21 witnesses.

22 HEARING OFFICER WEBB: Do you have
23 anything else you would like to present at this
24 time?

1 MR. INGERSOLL: No. Thank you.

2 HEARING OFFICER WEBB: Mr. Sievers,
3 do you have any witnesses you would like to call?

4 MR. SIEVERS: Yes. I'd like to call
5 Carol Rowe.

6 HEARING OFFICER WEBB: Could you
7 please state your name and spell it for the court
8 reporter.

9 THE WITNESS: Carol (C-a-r-o-l) Rowe
10 (R-o-w-e).

11 HEARING OFFICER WEBB: And would the
12 court reporter please swear in the witness.

13 (Whereupon the witness was sworn
14 by the reporter.)

15 MR. SIEVERS: Good morning, Ms. Rowe.

16 MS. ROWE: Good morning.

17 CAROL ROWE
18 called as a witness herein, at the instance of the
19 Respondent, having been first duly sworn on her
20 oath, was examined and testified as follows:

21
22 DIRECT EXAMINATION

23 BY MR. SIEVERS:

24 Q. What is CW3M Company?

1 **A. Environmental processing/consulting**
2 **firm.**

3 **Q.** And do you have a professional
4 relationship with that company?

5 **A. Yes.**

6 **Q.** And what is that relationship?

7 **A. President.**

8 **Q.** Are you an employee of the company
9 then?

10 **A. Yes, sir.**

11 **Q.** Are you an officer as well?

12 **A. Yes, sir.**

13 **Q.** And Chatham BP contracted with CW3M
14 for work at the Chatham BP site?

15 **A. Correct.**

16 **Q.** So Chatham BP is CW3M's client?

17 **A. Correct.**

18 **Q.** And you consult with Chatham BP on
19 decisions affecting the Chatham BP site?

20 **A. Correct.**

21 **Q.** Who do you most commonly consult with
22 at Chatham has been?

23 **A. Shamsir Amir; S-h-a-m-s-i-r A-m-i-r.**

24 **I think his actual name is a**

1 **little bit different. I'd have to look at it.**

2 HEARING OFFICER WEBB: I can give you
3 that. It's S-h-a-m-s-h-e-r A-m-a-r.

4 MR. SIEVERS: Permission to approach?

5 HEARING OFFICER WEBB: Yes.

6 Q. BY MR. SIEVERS: Ms. Rowe, I'm
7 handing you a document dated May 28, 2013.

8 Do you recognize that document?

9 MR. INGERSOLL: I object. It bears
10 no relevance in this matter. This letter is a
11 decision letter that was litigated completely in the
12 matter of PCB 14-1.

13 HEARING OFFICER WEBB: Overruled.

14 Q. BY MR. SIEVERS: Ms. Rowe, do you
15 recognize that letter to be the decision letter that
16 was the subject of the previous Chatham BP
17 litigation?

18 A. **Probably. I can go back and look at**
19 **the old one.**

20 Q. Do you have any reason to believe
21 it's not?

22 A. **No.**

23 MR. SIEVERS: Respondent moves for
24 judicial notice of this document. It is filed with

1 the Board under PCB 2014-001 on July 1, 2013
2 attached to the petition for review in the
3 underlying case.

4 HEARING OFFICER WEBB: It's part of
5 the record for PCB 14-1?

6 MR. SIEVERS: That's correct.

7 HEARING OFFICER WEBB: Do you happen
8 to know the page number of that record?

9 MR. SIEVERS: I don't know the page
10 number of the record. It's an attachment to the
11 petition for review.

12 HEARING OFFICER WEBB: Oh, okay.

13 MR. SIEVERS: If you'd like, I could
14 mark it with an exhibit label, and we could
15 introduce it if that would help.

16 HEARING OFFICER WEBB: Yeah, why
17 don't we do that.

18 MR. SIEVERS: Sure.

19 Here's the one that I've marked
20 as Exhibit A, and we would just ask that the Board
21 take judicial notice that this is the decision
22 letter identified by Chatham BP as the subject of
23 2014-001.

24 HEARING OFFICER WEBB: Okay. We can

1 take notice of that.

2 Q. BY MR. SIEVERS: Ms. Rowe, you
3 understood in that previous litigation brought by
4 Chatham BP that the Pollution Control Board fully
5 reversed the Agency on that decision letter?

6 A. Correct.

7 Q. I'm going to call your attention now
8 to page 130 of the record through page 135.

9 Do you recognize that document?

10 A. Yes.

11 Q. Now, except for the drum disposal
12 costs, this document beginning at page 130 of the
13 record, it directly contradicts the Board's decision
14 reversing Illinois EPA's May 28, 2013 letter,
15 correct?

16 A. Correct.

17 Q. And you received this February 25,
18 2015 letter, correct?

19 A. Correct.

20 Q. You read it?

21 A. Correct.

22 Q. You knew it was a mistake?

23 A. Well, initially I didn't know what it
24 was, but we assumed something was wrong or didn't

1 really understand what it was initially.

2 Well, and we had also submitted
3 another plan at that time too, so we didn't know if
4 there was some mix-up between that plan and a review
5 of the budget for the Board reversal plan.

6 So initially we weren't sure
7 what it was.

8 Q. Okay. If it wasn't a mistake, what
9 did you think it might be?

10 A. A review of something else.

11 But the very first line, by
12 order of the Board, we assumed, after looking at it
13 for a while, well, this should be related to review
14 of the budget.

15 Q. It appeared to you to be at least
16 kind of screwed up I would say?

17 A. Correct.

18 Q. Now, you subsequently -- -- well,
19 strike that.

20 At some point, did you make a
21 decision to file the petition for review in this
22 case?

23 A. Yes, we did. Many times we're told a
24 final decision cannot be reversed, like we have to

1 make some other submittal, some other action in
2 order to make that change.

3 Mr. Ingersoll was trying to work
4 with you. He was getting ready to leave town. The
5 clock was running out, so the petition was filed.

6 Q. Did you confer with Mr. Amar about
7 filing the petition for review?

8 A. We've had some recent conversations
9 with him. We knew that the cases had been reversed.
10 We already had done the Stage II investigation to
11 keep things moving because he was like, hey, come on
12 guys, let's get this going.

13 So he knew that we had some
14 things in the works to try to get this ball rolling.

15 Q. But prior to the filing of petition
16 for review in this case, had you consulted with
17 Mr. Amar about filing the petition for review?

18 A. This exact one, I'm not sure I was
19 talking to him during that timeframe. He knew that
20 we had this going on, and the other one being
21 settled and trying to get Stage II done and get on
22 with the Stage III, so I had conversations with him.

23 The filing of this one was a
24 last minute, Bill is going out of town, what are we

1 going to do. So it was pretty sudden.

2 I mean, honestly, we don't
3 really like to file these, but we settle quite
4 often, and this one was like, okay, I guess we've
5 got to do something here.

6 Q. Well, what do you mean by you settle
7 quite often?

8 A. Oh, there's a lot of times that
9 appeals get filed, you reach some kind of
10 settlement, and you walk away from them. You reach
11 some kind of mutual conclusion, and everybody kind
12 of walks away.

13 Q. You mean with the Agency?

14 A. With the Agency, yes, of course.

15 Q. That's common?

16 A. Yes. I mean, I would just like to
17 say, in a lot of these cases, you know, we incur
18 huge legal expenses, and you always have to make a
19 decision. Do you take it to the Board? Do you
20 settle it and you wipe away those legal expenses?
21 What's the best course of action.

22 And when you have something
23 small like this and all of a sudden you have a big
24 legal bill, what do you do? And it's always a best

1 judgment call of what to do with it.

2 And in this case, it was just we
3 had to file.

4 You know, I understand mistakes
5 happen, and it's nothing personal. It's nothing, I
6 mean, there's no animosity here. It was just how do
7 we fix this. And we didn't think that we could get
8 a reversal. Then we get the letter in, but then
9 we're knee deep in this thing. So how do we come to
10 some conclusion.

11 And, like I said, often times we
12 settle, but in this case, we'd had a lot of dollars
13 on the table already, so this was the course of
14 action that we took.

15 Q. Let me bring your attention to pages
16 136 through 138 in the record.

17 Do you recognize that letter?

18 A. Yes.

19 Q. Now, is that the letter that you
20 received sometime around at least the time of
21 petition for review is filed?

22 A. Yeah. We received this after the
23 filing.

24 Q. Okay. And did you understand this

1 letter to effectuate the Pollution Control Board's
2 order in the previous Chatham BP litigation; that
3 is, to fully reverse the Agency on its previous
4 decision letter of May 28, 2013?

5 **A. Yes. We understood that the Agency**
6 **was trying to correct a mistake, but then there was**
7 **a legal question of can a final decision just be**
8 **reversed, and that's for attorneys, and I'm not in**
9 **your world.**

10 **Q. And for these folks to decide?**

11 **A. Yeah, for these folks.**

12 **And we do this all the time with**
13 **the Agency. If there's a final decision letter**
14 **written and even with the Agency, if we need to make**
15 **some corrections, modifications, we resubmit**
16 **something in order to reverse that letter.**

17 **There's always some action in**
18 **order to do that.**

19 **So there was some question of is**
20 **this really okay to do this, and so we let this**
21 **process continue.**

22 **Q. But the relief that you were seeking**
23 **at least with your petition for review, setting**
24 **aside the attorney's fees and cost issue, you fully**

1 received that relief in this March 27, 2015 letter,
2 correct?

3 A. If it's all good with everybody,
4 legal, okay, but, I mean, the Stage I costs had
5 already been in the previous letter, and then the
6 Stage II work, we had already went ahead and
7 proceeded because our client was needing us to get
8 the work done.

9 Q. Well, let me --

10 A. So there's no actual -- it's a
11 budget, you know, not actual like reimbursement
12 costs like these guys spoke to earlier.

13 But if you're speaking in terms
14 of relief from the Board order and reversing those
15 costs, yes, as long as this stands and it can
16 reverse the final decision, and that's where the
17 legal.

18 Q. Well, my question is, since the
19 petition for review concerns the February 25, 2015
20 letter, is there anything that Chatham BP complains
21 about of that letter that hasn't been remedied in
22 the March 27, 2015 letter?

23 MR. INGERSOLL: Objection. You're
24 asking her for a legal conclusion as to its

1 effectiveness.

2 MR. SIEVERS: No. I'm asking for the
3 relief she's wanting.

4 HEARING OFFICER WEBB: You can
5 answer.

6 THE WITNESS: No. I think it takes
7 care of the Board issues and the budget issues that
8 we were looking for.

9 Q. BY MR. SIEVERS: After that
10 February 25, 2015 letter was issued or sent out by
11 Illinois EPA -- oh, strike that. Let me back up a
12 moment.

13 You represent Chatham BP,
14 correct?

15 A. Correct.

16 Q. And are you here today to speak on
17 behalf of Chatham BP?

18 A. Yes.

19 Q. So you're Chatham BP's agent or
20 representative today?

21 A. He was not able to be here today so I
22 was requested to be here.

23 Q. But CW3M aren't parties to this
24 litigation, correct? I mean, Chatham BP is the

1 party?

2 **A. Chatham BP is the party.**

3 Q. Okay. And CW3M is not a party,
4 correct?

5 **A. No.**

6 Q. After that February 25, 2015 letter
7 was sent, did Chatham BP or CW3M contact the Agency
8 about the grounds for that letter?

9 **A. Through legal counsel.**

10 Q. And I don't want to get into your
11 communications with your attorney.

12 **A. Right.**

13 Q. Other than through communications
14 with your attorney, were you aware of the status of
15 communications at any time with Illinois EPA
16 concerning the subject that is February 25, 2015
17 letter?

18 **A. Not to my knowledge.**

19 **We were working on a second plan**
20 **post this time. I'm not sure if it was during this**
21 **time. So one of our engineers could have been in**
22 **contact with Eric.**

23 **I don't know if it was this one.**
24 **I kind of doubt it because this was on the heels of**

1 **the Board decision, and we think most of this would**
2 **have been through legal counsel, but if there was**
3 **something else, I'm not really aware of it.**

4 Q. And Chatham BP through your company,
5 CW3M, has submitted additional documents after the
6 February 25, 2015 decision letter in this case for
7 related but different matters, isn't that right?

8 A. **Correct.**

9 Q. So there's another submittal that's
10 pending, is that right?

11 A. **Yeah, I think there was just a**
12 **different letter, issue pending.**

13 Q. You're familiar with Harry Chappel?

14 A. **Yes, sir.**

15 Q. How about Brian Bauer?

16 A. **Yes, sir.**

17 Q. And how do you know them?

18 A. **Well, Harry, I think we worked at the**
19 **Agency together way back in the day.**

20 **I've been doing this for 25**
21 **years so I've been around these guys for a long**
22 **time.**

23 Q. Do you understand that Mr. Chappel
24 signed the February 25, 2015 EPA letter?

1 **A. Yes.**

2 **Q.** And have you seen the e-mails that
3 are in the record where Agency staff are discussing
4 what to do in the results in the February 25, 2015
5 letter?

6 **A. Yes.**

7 **Q.** From those e-mails, are you aware
8 that both Brian Bauer and Harry Chappel were
9 involved in those discussions?

10 **A. Yes.**

11 **Q.** Do you have a personal bias or an ax
12 to grind towards Harry Chappel?

13 **A. No.**

14 **Q.** Do you have a personal bias or ax to
15 grind towards Brian Bauer?

16 **A. I don't think he likes CW3M too much
17 but, you know, we stay professional. We deal with
18 one site at a time in a professional manner, and
19 that's what we're supposed to do.**

20 **Q.** Isn't it correct that you have
21 written that it is a priority in lobbying the Rauner
22 administration for the removal of Brian Bauer and
23 Harry Chappel to other programs or even other
24 agencies?

1 MR. INGERSOLL: Objection.

2 MR. SIEVERS: She just testified as
3 to one thing, having no bias, and I am here now
4 going to impeach her on that point.

5 HEARING OFFICER WEBB: Okay. I'll
6 allow it.

7 MR. SIEVERS: Isn't that correct?

8 THE WITNESS: What I have to do
9 day-to-day I deal with day-to-day. It doesn't bias
10 what I have to do day-to-day.

11 What I think of a program's
12 administration is entirely different.

13 Q. I'm handing you what has been
14 previously marked as Illinois EPA Exhibit B. Take a
15 moment to review that.

16 Who is Marvin Johnson?

17 A. **He's with Chase Environmental.**

18 Q. And who is Rus Goodiel

19 (G-o-o-d-i-e-l)?

20 A. **He's with Chase Environmental.**

21 Q. Isn't it correct that in response to
22 Mr. Goodiel's e-mail, you wrote on January 13, 2015
23 of lobbying priorities on the LUST section staffing,
24 removal of antagonistic and targeting staff (Bauer,

1 Chappel, Weller) to other programs or agencies.
2 Take cause of ruining consultants and owner
3 operators personally.

4 Isn't that correct?

5 **A. Where are you reading?**

6 **Q.** Page 3 of Exhibit B.

7 (Pause)

8 **A. It doesn't mean that day-to-day we**
9 **don't --**

10 **Q.** That's not my question.

11 Didn't you write that?

12 **A. Yeah.**

13 MR. INGERSOLL: I'm going to have to
14 object to any continuing examination along this
15 line. It seems to have nothing to do with the
16 analysis of the Board's orders.

17 HEARING OFFICER WEBB: Well, I'm
18 going to sustain it to the point where -- you know,
19 let's keep it -- I'm not exactly sure where it ties
20 back in but...

21 MR. SIEVERS: I have nothing further
22 on this line so...

23 HEARING OFFICER WEBB: Okay. All
24 right.

1 MR. SIEVERS: Can I have a moment to
2 confer with my client?

3 HEARING OFFICER WEBB: Yes.

4 We'll go off the record for a
5 minute.

6 (Off the record)

7 HEARING OFFICER WEBB: Okay. We'll
8 go back on the record, please.

9 MR. SIEVERS: Nothing further of this
10 witness.

11 HEARING OFFICER WEBB: Mr. Ingersoll?

12 MR. INGERSOLL: Nothing.

13 HEARING OFFICER WEBB: Okay. Thank
14 you.

15 (Witness excused.)

16 HEARING OFFICER WEBB: Do you have
17 another witness?

18 MR. SIEVERS: I do not.

19 HEARING OFFICER WEBB: What are we
20 doing with this?

21 MR. SIEVERS: I'd like for Exhibit B
22 to be admitted into evidence, and Exhibit A was
23 already -- I'd like to move that for judicial
24 notice.

1 MR. INGERSOLL: I would object to the
2 admission of Exhibit B as far as relevance to the
3 analysis that took place in this matter at hand.

4 HEARING OFFICER WEBB: I agree. I'm
5 not going to admit this, but I will take it as an
6 offer of proof if you'd like me to do that.

7 MR. SIEVERS: I would. Thank you.

8 HEARING OFFICER WEBB: All right.
9 Exhibit B offered.

10 That's all for you.

11 MR. SIEVERS: Yes.

12 HEARING OFFICER WEBB: Mr. Ingersoll,
13 are you going to make any closing statement today?

14 MR. INGERSOLL: No, not if we're
15 going to set a briefing schedule.

16 HEARING OFFICER WEBB: Yes, we are.

17 Mr. Sievers, do you have any
18 closing statement you'd like to make today?

19 MR. SIEVERS: No. Thank you though.

20 HEARING OFFICER WEBB: The transcript
21 is due by June 8th and will be posted on the Board's
22 website.

23 The public comment deadline is
24 June 10th.

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Public comment must be filed in accordance with Section 101.628 of the Board's procedural rules.

Petitioner's brief is due by June 16th, and respondent's brief will be due by June 23rd.

If no one has anything further at this time, I will conclude the proceedings, and we stand adjourned.

Thank you everyone.

(Which were all of the proceedings held at this time.)

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