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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

No. PCB 95-170

ENVIRONMENTAL CONTROL AND

ABATEMENT, INC.,

Respondent.

Proceedings held on July 11, 2000, at 11:12 a.m., at the
Illinois Pollution Control Board, 600 South Second Street, Suite
403, Springfield, Illinois, before the Honorable Steven C.
Langhoff, Hearing Officer.

Reported by: Darlene M. Niemeyer, CSR, RPR
CSR License No.: 084-003677

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A P P E A R A N C E S

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On behalf of Respondent.

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I N D E X

		PAGE NUMBER
1		
2	WITNESS	
3		
4	WILLIAM A. LEMIRE	
	Direct Examination by Ms. Pitrolo.....	13
5	Cross Examination by Ms. Vogel.....	19
6	ALAN GRIMMETT	
	Direct Examination by Ms. Pitrolo.....	20
7	Cross Examination by Ms. Vogel.....	29
	Redirect Examination by Ms. Pitrolo.....	43
8	Recross Examination by Ms. Vogel.....	45
9	DALE HALFORD	
	Direct Examination by Ms. Pitrolo.....	47
10	Cross Examination by Ms. Vogel.....	50
	Redirect Examination by Ms. Pitrolo.....	57
11	WILLIAM A. LEMIRE	
12	Direct Examination by Ms. Vogel.....	58
	Cross Examination by Ms. Pitrolo.....	92
13	Redirect Examination by Ms. Vogel.....	106
	Recross Examination by Ms. Pitrolo.....	109
14	Further Redirect Examination by Ms. Vogel.....	117
15	DALE HALFORD	
	Direct Examination by Ms. Vogel.....	120
16		
17		
18		
19		
20		
21		
22		
23		
24		

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1	E X H I B I T S		
2	NUMBER	MARKED FOR I.D.	ENTERED
3	People's Exhibit 1	16	58
	People's Exhibit 2	99	117
4	People's Exhibit 3	111	117
	People's Exhibit 4	113	117
5			
6	Respondent's Exhibit 1	54	63
7	Respondent's Exhibit 2	89	90
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

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1 P R O C E E D I N G S

2 (July 11, 2000; 11:12 a.m.)

3 HEARING OFFICER LANGHOFF: Good morning, everyone. My name
4 is Steven Langhoff. I am the Pollution Control Board Hearing
5 Officer who will be handling this matter. This is PCB 95-170,
6 People of the State of Illinois versus Environmental Control and
7 Abatement, Inc. For the record, it is Tuesday, July 11th, 2000,
8 and we are beginning at approximately 11:12. I apologize for the
9 delay.

10 I should note for the record that I am assuming the
11 responsibility for this case after Amy Felton left our office,
12 and she was the Hearing Officer for a substantial amount of time
13 that this case has been before the Board. I want to note for the
14 record that there are no members of the public present. Members
15 of the public are encouraged and allowed to provide public
16 comment if they so choose.

17 I would like to introduce Chief Hearing Officer John
18 Knittle of the Board. There are no other Board employees here
19 today.

20 At issue in this case are allegations contained in the
21 complaint filed by the People of the State of Illinois. The
22 violations alleged in the complaint relate to Environmental
23 Control and Abatement Inc.'s removal of asbestos containing
24 material, or ACM, prior to demolition or renovation activities.

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1 The locations of the asbestos removal included five sites, Alton
2 Mental Health Center, the Alton facility; Gardner Denver, the
3 main plant, the Quincy facility; Environmental Services Building,
4 the Urbana facility; the boiler house, the Centralia facility;
5 and Highland Junior High School, the Highland facility.

6 Based upon the Board's previous decisions, only one site
7 remains in this controversy, the Highland site in Madison County,
8 Illinois. The parties have agreed to hold the hearing today in
9 Springfield, in Sangamon County. The People allege that
10 Environmental Control and Abatement, Inc., violated the Illinois
11 Environmental Protection Act by providing untimely notification
12 of asbestos removal activity, incomplete notification of asbestos
13 removal activity, and untimely revised notification of asbestos
14 removal activity.

15 I want to take a brief moment to let you know what is going
16 to happen today and after the proceeding today. You should know
17 that it is the Board and not me that will make the final decision
18 in this case. My job as a Hearing Officer requires that I
19 conduct the hearing in a neutral and orderly manner so that we
20 may have a clear record of the proceedings here today. It is
21 also my responsibility to assess the credibility of any witnesses
22 giving testimony today, and I will do so on the record at the
23 conclusion of the proceedings.

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1 then we will proceed with the State's case followed by the
2 Environmental Control and Abatement Inc.'s having an opportunity
3 to put on a case in its behalf. We will conclude any closing
4 arguments that the parties wish to make and then we will discuss
5 off the record a briefing schedule which will be set on the
6 record at the conclusion of the proceedings.

7 The Board's procedural rules and the Environmental
8 Protection Act provide that members of the public shall be
9 allowed to speak or submit written statements at hearing. Any
10 person offering such testimony today shall be subject to
11 cross-examination by both of the parties. Any such statements
12 offered by members of the public must be relevant to the case at
13 hand.

14 I will call for any statements from members of the public
15 at the conclusion of the proceedings. At this time I will ask
16 whether there are any members of the public present who wish to
17 give statements today? Seeing none, I will proceed at this time,
18 and I will ask again for any comments at the end of the
19 proceedings.

20 This hearing was noticed pursuant to the Illinois
21 Environmental Protection Act and the Board's rules and
22 regulations and will be conducted pursuant to Sections 103.202
23 and 103.203 of the Board's rules.

24 At this point I would like to have the parties to make

7

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1 their appearances on the record and introduce themselves starting
2 with the State.

3 MS. PITROLO: My name is Elizabeth Pitrolo, that is
4 P-I-T-R-O-L-O, representing the Attorney General's Office for the
5 State of Illinois.

6 HEARING OFFICER LANGHOFF: Thank you.

7 MS. VOGEL: My name is Musette Vogel. That is
8 M-U-S-E-T-T-E, and the last name Vogel, V-O-G-E-L. I am with the
9 law firm of the Stolar Partnership. I represent EC&A.

10 HEARING OFFICER LANGHOFF: Are there any outstanding or
11 pre-hearing motions that the parties would like to present before
12 we proceed?

13 MS. PITROLO: No, Mr. Hearing Officer.

14 MS. VOGEL: None.

15 HEARING OFFICER LANGHOFF: Thank you. Would the parties
16 like to give an opening statement on behalf of their clients,
17 starting with the State?

18 MS. PITROLO: The State would like to give an opening
19 statement, sir.

20 This action was commenced on behalf of the People of the
21 State of Illinois against the respondent, Environmental Control
22 and Abatement, on numerous violations of the Illinois

23 Environmental Protection Act and the National Emissions Standards
24 for Hazardous Air Pollutants for asbestos, the enforcement of

8

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1 which has been duly authorized to the Illinois Environmental
2 Protection Agency. The People's complaint was filed on June
3 13th, 1995, and was amended on November 3rd of 1995.

4 The allegations in the complaint deal with improperly
5 completed or untimely submitted notifications as required under
6 the National Emission Standards for Hazardous Air Pollutants by
7 the respondent, Environmental Control and Abatement. These
8 violations occurred at five -- these alleged violations occurred
9 at five different sites, and there are five different violations
10 alleged. These sites, as you mentioned, Mr. Langhoff, included
11 the Alton Mental Health Center, referred to in the pleadings as
12 the Alton site. The Gardner Denver main plant of Cooper
13 Industries, referred to in the pleadings as the Quincy site. The
14 Environmental Services Building at the University of Illinois at
15 Champaign-Urbana, referred to as the Urbana site. The Boiler
16 House at the W.G. Marie Correctional Center, referred to in the
17 pleadings as the Centralia site. And, finally, the site at issue
18 today, the Highland Junior High School in Highland, Illinois,
19 referred to in the pleadings as the Highland site.

20 The violations alleged in the People's complaint include
21 failure to timely file the notifications as required by the
22 asbestos NESHAP at Quincy, Alton and Centralia. Failure to file

23 complete and accurate notifications at all five sites and failure
24 to timely file revised notification for the Centralia site.

9

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1 Now, fortunately for us here today and the late start that
2 we are getting, today's hearing, the vast majority of issues have
3 already been decided by the Board, and they have been decided in
4 favor of the People of the State of Illinois for the most part.
5 There were three previous Board orders that were dispositive on
6 issues for this case. By Board order dated January 4th, 1996,
7 the Board found that EC&A is an operator as defined in 40 CFR
8 61.141 and that EC&A is responsible to thoroughly inspect any and
9 every facility where it would perform renovation activities.
10 This Board decision pertains explicitly to the Highland site that
11 is at issue today.

12 By Board order, on February 17th of 2000, the Board found
13 that EC&A failed to provide a complete notification for the Alton
14 site and, therefore, had violated 40 CFR 61.145 and Section 9.1
15 (d) of the Act. The Board also found in that same order that
16 EC&A failed to provide a timely notification for the Quincy site
17 and violated 40 CFR 61.145 and Section 9.1 (d) of the Act.

18 Finally, in that same order the Board found that EC&A
19 failed to provide a complete notification and failed to provide a
20 timely notification for the Highland site, therefore, violating
21 40 CFR 61.145 and 9.1 (d) of the Act. Even though the Board

22 found that there was a notification violation at the Highland
23 site, it did so with the caveat that additional finding of fact
24 was necessary to determine whether regulated asbestos containing

10

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1 material was located at the Highland site and that is the only
2 issue, the sole issue of material fact to be found by the Board
3 today.

4 The last item in the Board's order for February 17th was a
5 finding that EC&A did not violate for the Centralia site.
6 Finally, in a Board order dated May 4th, 2000, the Board again
7 held for the People finding that EC&A failed to provide complete
8 notice for the Urbana site.

9 So in summary, Mr. Hearing Officer, the People have alleged
10 notification violations at five different sites by the
11 respondent, EC&A. The Board has already found that EC&A was in
12 violation at three of those sites, Alton, Quincy and Urbana, and
13 found that there was a violation at the Highland site if
14 regulated asbestos containing material was found at the site. So
15 if regulated asbestos containing material was found at Highland,
16 the People will prevail on that site as well.

17 So once the evidence as presented today is assessed we are
18 confident that Highland will join the other three sites and the
19 Board will find in favor of the People. The People are seeking a
20 penalty in this case, as well, Mr. Hearing Officer. That penalty
21 recommendation on behalf of the State is \$12,000.00. We will be

22 providing the Board with a brief in support of our penalty
23 recommendation. That brief will include citations of law such as
24 EGS Watts, in which a penalty of \$60,000.00 was assessed for

11

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1 failure to report and failure to timely pay fees. Also the case
2 of Freedom Oil where a penalty of \$30,000.00 was assessed for
3 failure to timely report at an underground storage tank site, and
4 a series of Board orders recently issued which assess penalties
5 in the amount of \$2,000.00 to \$10,000.00 for single notification
6 violations of the asbestos NESHAP.

7 Thank you, Mr. Hearing Officer.

8 HEARING OFFICER LANGHOFF: Thank you. Ms. Vogel.

9 MS. VOGEL: I will keep my comments brief because I believe
10 that the record speaks for itself as to what the motion states
11 and the Board knows what it ruled on and can interpret them
12 themselves. My understanding is that there are two issues here
13 today. One is the very simple question of whether or not the
14 material found at the Highland facility is considered to be
15 regulated asbestos containing material, and the second issue is
16 that we are here to take evidence on what the aggravated and
17 mitigating circumstances may be in assessing a penalty in this
18 case.

19 It is EC&A's position that no matter what has happened in
20 this case that the complaints were brought -- that the complaint

21 in this case was brought substantially after the alleged
22 violations occurred. In each case EC&A was under the
23 understanding that each of the violations had been resolved to
24 the State's satisfaction. The complaint was quite a surprise to

12

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1 EC&A, and that when the complaint was brought no violations had
2 been at issue. No CILs had been issued. There had been no
3 concerns with EC&A's compliance under Illinois law in minimum of
4 one year with regard to one site and a maximum of four years with
5 regard to another site. So we are here to address the issue and
6 ask that no penalty be assessed whatsoever in this case. And
7 with that, I conclude my opening statement.

8 HEARING OFFICER LANGHOFF: Thank you. Ms. Pitrolo, would
9 you put on your case-in-chief, please.

10 MS. PITROLO: Thank you, Mr. Hearing Officer. The People
11 call Mr. William Lemire to the stand.

12 MS. VOGEL: Mr. Hearing Officer, may I ask where you would
13 like Mr. Lemire to sit.

14 HEARING OFFICER LANGHOFF: Actually, I hadn't thought of
15 it. Okay. Would you sit right up here.

16 Would you swear the witness, please.

17 (Whereupon the witness was sworn by the Notary Public.)

18 W I L L I A M A. L E M I R E,

19 having been first duly sworn by the Notary Public, saith as
20 follows:

21

DIRECT EXAMINATION

22

BY MS. PITROLO:

23

Q. Could you please state your name for the record.

24

A. Yes, William A. Lemire, L-E-M-I-R-E.

13

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Q. And, Mr. Lemire, how are you employed?

2

A. How am I employed?

3

Q. Yes, sir.

4

A. I am employed as a general manager for the St. Louis

5

area by PDG Environmental.

6

Q. PEG Environmental?

7

A. PDG.

8

Q. PDG Environmental. How were you employed by

9

Environmental Control and Abatement at the time of these alleged

10

violations?

11

A. I was president of the company.

12

Q. And how long were you president of EC&A?

13

A. From 1985 to the present date, although I am not -- I am

14

still an officer. I am not employed.

15

Q. And could you briefly describe the type of activities

16

that EC&A is engaged to perform?

17

A. Is?

18

Q. Or was at the time of the violations?

19

A. At the time of the alleged violations?

20 Q. Yes. Thank you.

21 A. EC&A was an environmental contractor specializing in
22 asbestos and lead abatement.

23 Q. About how many clients did EC&A have at the time of the
24 violations?

14

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1 A. Since its inception?

2 Q. No. At the time of the violations, how many clients had
3 it had at that time?

4 A. I am not sure I understand the question. I mean, at the
5 specific time? I mean --

6 Q. I will try to be more specific for you, sir. You say
7 that EC&A was conceived in 1985; is that correct?

8 A. Yes.

9 Q. So how many clients had it had total by the time that
10 these violations occurred in 1991 through 1993?

11 A. Several hundred.

12 Q. Several hundred. So you served several hundred
13 clients --

14 A. Yes.

15 Q. -- in the asbestos abatement and environmental control;
16 is that correct?

17 A. That's correct.

18 Q. And how many states did Environmental Control and
19 Abatement have offices in at that time?

20 A. Two.
21 Q. Two states?
22 A. Excuse me. Are you talking about 19 --
23 Q. 1985 through 1993, at the time of the violations?
24 A. We had had a total of three offices.

15

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1 Q. You did have three offices?
2 A. Yes.
3 Q. And about what were the current annual revenues of EC&A?
4 A. Two or three million dollars a year.
5 Q. All right. Is it safe to assume, Mr. Lemire, that you
6 have a familiarity with the asbestos NESHAP 40 CFR Part 61?
7 A. Yes.
8 Q. And, in fact, you have personally written numerous
9 articles on asbestos abatement; is that correct?
10 A. I had written numerous articles, maybe not specifically
11 on asbestos abatement, but some of them would have encompassed
12 that, yes.
13 Q. Thank you Mr. Lemire. I am going to turn your
14 attention, Mr. Lemire, to a document that I have labeled People's
15 Exhibit Number 1.
16 (Whereupon said document was duly marked for purposes of
17 identification as People's Exhibit 1 as of this date.)
18 Q. (By Ms. Pitrolo) I am going to hand a copy to

19 respondent's counsel and hand one to you as well. I will give
20 you a moment to look that over, Mr. Lemire.

21 A. (The witness reviewing document.) Yes.

22 Q. Are you familiar with this document, Mr. Lemire?

23 A. This specific document?

24 Q. Yes, sir.

16

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1 A. Yes.

2 Q. And can you tell us what that is?

3 A. It is entitled notification of demolition and
4 renovation.

5 Q. And is that your signature at the bottom of the second
6 page in block 16?

7 A. No.

8 Q. No?

9 A. No. I recognize it as a signature of an employee.

10 Q. I am going to ask you again, Mr. Lemire, to look at that
11 block 16 where it says signature of owner/operator and it
12 specifically says William A. Lemire.

13 A. It is my name. I am not -- I can't tell the way that
14 this is -- it is reasonably close, but I can't guarantee it.

15 Q. You cannot tell whether that is your own signature or
16 not, sir?

17 A. No.

18 Q. Are you stating --

19 A. I don't think it is.
20 Q. So you are stating at this time that is not your
21 signature even though it is your name --
22 A. I am not certain.
23 Q. -- signed in cursive?
24 A. I am not certain.

17

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1 Q. All right, Mr. Lemire. I will continue on. Can you
2 read to me under block seven of the first page of this document
3 what it states under the column RACM to be removed?
4 A. 2,000 SF, which I take to be square feet.
5 Q. That is correct. So can you tell us, sir, what RACM
6 stands for?
7 A. Asbestos containing material.
8 Q. Can you be more specific, sir, what RACM stands for?
9 A. I take it regulated ACM to be removed.
10 Q. So again, Mr. Lemire, by the notification that was
11 submitted under your name, and now you are stating that is not
12 your signature, but under your name, under the notification that
13 was submitted with your name signed to it, it states there was
14 2,000 square feet of RACM to be removed; is that correct?
15 A. Yes.
16 Q. Okay. I am going to turn your attention now to the very
17 last section, that is section 17. Can you tell me whose

18 signature is in that block?

19 A. Janie, I believe, Geiger.

20 Q. And who is Ms. Geiger?

21 A. She was an administrative assistant at our office.

22 Q. She was an employee of Environmental Control and
23 Abatement at the time of the violations, sir?

24 A. Yes.

18

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1 MS. PITROLO: Let the record show that the People
2 subpoenaed Ms. Geiger, but were notified by the respondent by fax
3 that Ms. Geiger was no longer in the employ of EC&A.

4 Q. (By Ms. Pitrolo) So Ms. Geiger was, however, in the
5 employ of EC&A at the time of the violations, sir?

6 A. Yes, alleged violations.

7 Q. And she worked for you, Mr. Lemire?

8 A. Yes.

9 Q. So she was signing in her capacity as an employee of
10 Environmental Control and Abatement at the time?

11 A. Yes.

12 Q. And it is your name in the signature block above that,
13 her signature?

14 A. My name, William A. Lemire.

15 MS. PITROLO: Thank you very much, Mr. Lemire. That's all
16 I have.

17 HEARING OFFICER LANGHOFF: Ms. Vogel.

18

CROSS EXAMINATION

19

BY MS. VOGEL:

20

Q. Mr. Lemire, does EC&A exist at the present?

21

A. Yes.

22

Q. It does. Does it do business in the State of Illinois?

23

A. No.

24

Q. Does it have any annual revenues at all from any source?

19

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1

A. In the State of Illinois?

2

Q. Coming from the State of Illinois, yes?

3

A. No.

4

Q. No. Thank you. Just a moment. I might have one more

5

question, please.

6

MS. VOGEL: Nothing further.

7

HEARING OFFICER LANGHOFF: Thank you. Ms. Pitrolo,

8

anything else?

9

MS. PITROLO: No, nothing on redirect.

10

HEARING OFFICER LANGHOFF: Thank you, Mr. Lemire.

11

(The witness left the stand.)

12

HEARING OFFICER LANGHOFF: Ms. Pitrolo.

13

MS. PITROLO: The People call Mr. Alan Grimmett to the

14

stand.

15

HEARING OFFICER LANGHOFF: Would you swear in the witness,

16

please.

17 (Whereupon the witness was sworn by the Notary Public.)

18 A L A N G R I M M E T T,

19 having been first duly sworn by the Notary Public, saith as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. PITROLO:

23 Q. Mr. Grimmatt, would you please state your name for the
24 record.

20

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1 A. Alan Grimmatt.

2 Q. And how are you employed, Mr. Grimmatt?

3 A. I am an inspector with the Illinois EPA.

4 Q. What is your job title, sir?

5 A. I am an Environmental Protection Associate I.

6 Q. And how long have you been in that position?

7 A. I was employed -- I had been employed since December of
8 1998.

9 Q. Thank you, Mr. Grimmatt. Prior to your employment with
10 the Illinois Environmental Protection Agency, how were you
11 employed?

12 A. I was a licensed asbestos removal contractor supervisor.
13 I started in 1989. I obtained a worker's license. And in 1990 I
14 obtained a supervisor's license. In 1992 I obtained a project
15 manager's license. During that period of time I have overseen
16 several -- numerous asbestos removal projects. I have partaken

17 in air sampling under the direct supervision of a licensed
18 industrial hygienist at several different chemical plant
19 facilities, industrial settings.

20 I have -- being a supervisor and project manager, I have
21 actually ran school jobs and I have actually overseen school
22 jobs. I am also a licensed inspector. I have performed numerous
23 inspections collecting bulk samples determining cryobility of
24 materials, that type of thing.

21

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1 Q. So, Mr. Grimmatt, it is safe to say that you have had
2 approximately 11 years of experience in asbestos abatement
3 control procedures?

4 A. That's correct.

5 Q. Thank you. Approximately how many asbestos removal
6 sites have you visited in the course of your employ with the
7 Environmental Protection Agency?

8 A. Well over 100.

9 Q. Have you had the opportunity to observe the removal of
10 asbestos during your inspection of those sites?

11 A. Yes, I have.

12 Q. Are you familiar specifically with floor tile and mastic
13 removal?

14 A. Yes, I am.

15 Q. Thank you, Mr. Grimmatt. Are you familiar with 40 CFR

16 Part 61?

17 A. Yes, I am.

18 Q. What is that, Mr. Grimmett?

19 A. It is the NESHAP regulations.

20 Q. Thank you. Can you briefly describe to us what is
21 contained in those NESHAP regulations?

22 A. Yes. The first part is the applicability, thoroughly
23 inspect the facilities for the presence of asbestos containing
24 materials including category one and category two nonfriables.

22

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1 And then the notification requirements and the disposal
2 requirements.

3 Q. And are you specifically familiar with the notification
4 provisions that are contained in 40 CFR 61.145?

5 A. Yes, I am.

6 Q. And what are those? Can you briefly tell us what the
7 notification provisions are?

8 A. Yes.

9 MS. VOGEL: Excuse me. I would like to object. EC&A, the
10 respondent is willing to stipulate as to what is contained in the
11 NESHAP requirements. My understanding is that is not at issue in
12 this proceeding.

13 MS. PITROLO: That's fine. If Ms. Vogel is willing to
14 stipulate as to the fact that the NESHAP provisions do require
15 inspection by the owner/operator, that a notification does need

16 to be filed, and that the notification has to be filed with the
17 Illinois EPA within ten days of the work being commenced, and
18 that revision notifications based on changed conditions must be
19 filed by the owner/operator, then I will discontinue this line of
20 questioning with this witness.

21 HEARING OFFICER LANGHOFF: Ms. Vogel?

22 MS. VOGEL: What I said, and I will restate it, is that I
23 will stipulate as to what is contained in 40 CFR 61.145.

24 MS. PITROLO: Are you objecting to what I have just

23

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1 summarized as that? Otherwise, I will ask this witness to --

2 MS. VOGEL: I won't stipulate that they necessarily apply
3 to the site. I will stipulate that they exist in law, and I
4 don't believe he needs to describe for us what is contained in
5 the law.

6 MS. PITROLO: At this point in time I would agree that
7 those stipulations are agreeable with the State so long as it is
8 shown that those are applicable to this defendant.

9 Q. (By Ms. Pitrolo) I am going to show you a document, Mr.
10 Grimmatt, that is labeled People's Exhibit Number 1 and have you
11 take a look at that.

12 A. (The witness reviewing document.)

13 HEARING OFFICER LANGHOFF: Excuse me. I would like the
14 record to reflect that there has been a stipulation as to the

15 contents of the Code of Federal Regulations.

16 Q. (By Ms. Pitrolo) When you are done, Mr. Grimmatt,
17 please look up. Thank you. Do you recognize that document, Mr.
18 Grimmatt?

19 A. Yes, I do.

20 Q. What is it?

21 A. It is a notification of demolition and renovation.

22 Q. And by whom was it submitted?

23 A. It was submitted by Environmental Control and Abatement,
24 Incorporated.

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1 Q. And where was the work to be performed?

2 A. At the Highland Junior High School in Highland,
3 Illinois.

4 Q. Thank you. I am going to call your attention to block
5 16. On block 16 whose name appears in that block?

6 A. Mr. Lemire, William Lemire.

7 Q. Thank you, Mr. Grimmatt. As an inspector for the
8 Illinois Environmental Protection Agency, can you give us a
9 synopsis of the information that you would find notable if you
10 were reviewing that particular notification?

11 A. As an inspector, before I do an inspection, I normally
12 review the notifications that come in to the Agency. This is
13 basically how I determine where or who I am going to inspect. On
14 this notification, the first block, number one, type of

15 notification, it does not indicate whether it is an original or
16 revised or a cancelled. I review the facility information, where
17 the work is going to be performed, who the contractor is. I come
18 down to the type of operation, whether it is going to be a
19 removal or it is going to be a renovation or a demolition. And
20 in this case it basically says removal.

21 Then I check to see if there is asbestos present, and in
22 this case there is floor tile that is going to be removed at the
23 Highland Junior High. Which takes me to block seven, and I look
24 to see the procedure, including analytical method to detect the

25

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1 presence of asbestos containing materials. This particular one
2 does not have the procedure or analytical method as defined in
3 the asbestos NESHAP regulations.

4 I come down to paragraph seven, and I note that, again,
5 floor tile and mastic is going to be removed. They have
6 indicated that it is going to be removed as a regulated asbestos
7 containing material, surface area material. I go back to section
8 ten and I look at this and I see they are going to use
9 containment, which is consistent with removing regulated asbestos
10 containing material. Also description for work practices, wet
11 removal, negative pressure. This is also consistent with removal
12 of regulated asbestos containing material. I might also note
13 that there is not -- I believe there is not a ten working day

14 notice on this. There must be ten working days from the date it
15 is postmarked.

16 Q. Okay. Mr. Grimmett, I am going to call your attention
17 specifically to items ten and eleven on page two of that
18 notification. When removal -- when renovation activities are
19 performed to remove regulated asbestos containing material, what
20 types of removal techniques would you normally see in items ten
21 and eleven?

22 A. For regulated asbestos containing --

23 Q. For regulated asbestos containing material?

24 A. Normally you would see full containment, wet removal,

26

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1 negative pressure, that type of thing.

2 Q. Are these the types of things that are listed in this
3 particular notification?

4 A. Yes, they are.

5 Q. If category one nonfriable asbestos was going to be
6 removed what would you have expected to see in sections ten and
7 eleven?

8 A. Nothing.

9 Q. Nothing?

10 A. Nothing.

11 Q. So in your opinion, as an Illinois Environmental
12 Protection Agency inspector and an expert in asbestos removal,
13 what did the techniques that are listed in items ten and eleven

14 tell you?

15 A. They are consistent with a regulated project or
16 regulated asbestos containing material removal as indicated in
17 block number seven.

18 Q. Mr. Grimmatt, would you please explain for the record
19 just when floor tile and mastic would be considered regulated
20 asbestos containing material and when it would be considered
21 category one nonfriable asbestos containing material?

22 A. Category one nonfriable is floor tile and mastic,
23 roofing material, asphalt roofing, that type of thing. And if it
24 is in good condition and removed intact then that would not be a

27

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1 regulated project. A regulated category one nonfriable, that
2 becomes friable or regulated, would need to be treated with a
3 full containment and negative pressure which is consistent with
4 what they have indicated on the notification. The methods that
5 you would use to remove category one nonfriable basically
6 determines whether the material is going to be regulated or not.

7 Q. So it is the removal technique that renders it friable?

8 A. The technique, that's correct.

9 Q. And the techniques that are listed by the respondent in
10 sections ten and eleven, again, what do they tell you?

11 A. That they are going to be using full containment and
12 negative pressure and be removing it in a regulated manner.

13 Q. Thank you, Mr. Grimmatt. Now, what would EC&A do if
14 they subsequently found that they could just remove this as
15 category one nonfriable?

16 A. Revise the notification.

17 Q. And was a revised notification ever received by the
18 Illinois EPA indicating that there was no regulated asbestos
19 containing material present?

20 A. Upon reviewing this file prior to this hearing, I did
21 not note a revision in their file anywhere.

22 Q. Thank you, Mr. Grimmatt. Now, in your experience as an
23 inspector for the Illinois EPA, how is your ability to inspect
24 impacted by untimely or improperly completed notifications?

28

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1 A. Greatly. It normally takes six to seven days before we
2 receive a notification and get it entered into our system. If we
3 receive the notification late and I show up on a job, and the job
4 is complete, then it wastes the State's money and my time. And
5 if the notification is not accurate, and I show up on a site, for
6 instance, if the material is being removed which they should
7 indicate if it is being removed as a nonfriable, and I show up
8 and they are removing friable, then that is a significant issue,
9 as well.

10 Q. So your job is impacted severely if you do not get
11 correct notifications?

12 A. That's correct.

13 MS. PITROLO: Thank you, Mr. Grimmatt. That's all of the
14 questions the People have.

15 MS. VOGEL: First of all, I would like to apologize for not
16 standing up and down. I have a very serious knee injury and this
17 would exacerbate it. Is that all right?

18 HEARING OFFICER LANGHOFF: That's fine. Thank you.

19 MS. VOGEL: Thank you.

20 CROSS EXAMINATION

21 BY MS. VOGEL:

22 Q. Mr. Grimmatt, I am sorry, but I am not sure I caught it.
23 Did you work for the Illinois Environmental Protection Agency in
24 1991?

29

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1 A. No.

2 Q. You did not? When did you begin working for the Agency?

3 A. In 1998.

4 Q. In 1998?

5 A. December of 1998.

6 Q. Were you working in the private sector in 1991?

7 A. Yes, I was.

8 Q. When the NESHAP was adopted by the federal government?

9 A. That's correct.

10 Q. Mr. Grimmatt, have you ever inspected one of the sites
11 that EC&A ever performed a removal at?

12 A. No, I have not.

13 Q. Do you have any specific information as to the removal
14 that occurred at the Highland Junior High School?

15 A. Only what they indicated on the notification.

16 Q. So you did not inspect the Highland Junior High School
17 since it took place in 1991?

18 A. No, I did not.

19 Q. Mr. Grimmett, do you know the date in which the federal
20 regulations were adopted, the federal NESHAP?

21 A. 1990.

22 Q. Pardon me?

23 A. 1990.

24 Q. Do you know the month?

30

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1 A. November, I believe.

2 Q. Do you know what date that they were adopted in terms of
3 the State of Illinois?

4 MS. PITROLO: I am going to object to this for the same
5 reason that she objected to my line of questioning when I was
6 asking Mr. Grimmett. This is not relevant.

7 MS. VOGEL: I did not object on the basis of relevancy
8 previously, so it would not be similar.

9 MS. PITROLO: Well, then I will object on the basis of
10 relevancy.

11 HEARING OFFICER LANGHOFF: I will allow the question.

12 Q. (By Ms. Vogel) Mr. Grimmatt, do you know what month the
13 rules were adopted in the State of Illinois governing asbestos
14 removal notification?

15 A. I am not sure.

16 Q. Are you aware that this -- excuse me. Do you know where
17 this form that you are reviewing came from? Do you know who
18 drafted this form or created it?

19 A. I am not sure I understand your question.

20 Q. Do you know whether or not the Illinois Environmental
21 Protection Agency drafted this form?

22 A. I do not know.

23 Q. Could you look at the People's Exhibit Number 1 for me
24 in section seven. Is there anywhere on this form a place for an

31

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1 owner or operator to indicate the amount of asbestos containing
2 material that is to be removed that might not be regulated?

3 A. No, there is not.

4 Q. There is not. Mr. Grimmatt, is all floor tile and
5 mastic considered to be nonfriable?

6 A. No.

7 Q. Under what circumstances does it become friable?

8 A. If it is in poor condition and is subject to sanding,
9 grinding, cutting or abrading.

10 Q. Are you aware whether or not sanding, cutting, grinding

11 or abrading occurred at the Highland Junior High School by EC&A?

12 A. No, I am not.

13 Q. So you have no personal knowledge as to whether or not
14 the material removed at the site was, in fact, regulated asbestos
15 containing material other than what is provided on this form?

16 A. Other than what is provided on this form, I have no
17 knowledge of what occurred down at Highland. I was not employed
18 by the State at that time.

19 Q. Okay. Mr. Grimmett, have you personally removed floor
20 tile and mastic?

21 A. Yes, I have.

22 Q. And of those jobs how many of those jobs, in your
23 estimate, were category one nonfriable removal projects?

24 A. I can recall one.

32

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1 Q. And the remainder were friable?

2 A. Yes.

3 Q. When was the last time you performed this type of
4 removal, what year?

5 A. 1998.

6 Q. How many projects did you work on where you removed
7 category one nonfriable that became friable?

8 A. I can only give you an estimation.

9 Q. Well, more than ten?

10 A. Oh, yes.

11 Q. More than 100?

12 A. Well over 50.

13 Q. Well over 50. So in each case the company that you
14 worked for provided notification to the State when it was
15 nonfriable and it could become friable?

16 A. The nonfriable job that I did do was not in the State of
17 Illinois. It was in Pennsylvania.

18 Q. Where were the other 50 jobs?

19 A. They were all in Illinois.

20 Q. They were all in Illinois?

21 A. Yes.

22 Q. What types of techniques, other than wet removal, are
23 used on removing floor tile and mastic that render it friable?
24 Could you describe the technique?

33

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1 A. Yes. There is ice scrapers. Floor tile sometimes is
2 extremely difficult to come up off the mastic. Sometimes you
3 have to beat it off with a hammer in places. Hand scrapers, tile
4 chippers, shop blasters.

5 Q. Mr. Grimmett, have you ever heard of a company providing
6 a notification to the State of Illinois when they don't
7 necessarily believe that the notification requirement might apply
8 to them?

9 MS. PITROLO: Objection, Mr. Hearing Officer. This is

10 speculative, have you ever heard.

11 Q. (By Ms. Vogel) In your experience have you ever come
12 across such a thing?

13 A. Could you repeat the question again.

14 Q. Where a company might provide a notification to the
15 State of Illinois, the Illinois Environmental Protection Agency,
16 regarding a removal project, when they believe that or they are
17 not quite certain whether or not the regulations apply?

18 MS. PITROLO: I remained standing, Mr. Hearing Officer,
19 thinking that I was going to have to object again and I am. Ms.
20 Vogel is reaching at the issue of courtesy notice, which has
21 already been decided by the Board. In the case of the Highland
22 site the Board has determined that there was a violation that the
23 notification was untimely filed and incomplete. Therefore, there
24 is no such thing as a courtesy notification to be filed before

34

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1 the Illinois Environmental Protection Agency. The only relevant
2 issue at the Highland site is whether or not there was regulated
3 asbestos containing material present.

4 HEARING OFFICER LANGHOFF: Ms. Vogel?

5 MS. VOGEL: Woa. That is fascinating. First of all, if we
6 were here because the violations had been determined by the Board
7 already, if that is the reason why we are here, then why are we
8 here. We are here to determine whether there is regulated
9 asbestos containing material and if, and only if, there is

10 regulated asbestos containing material then the Board will
11 determine if there is a violation. The NESHAPs do not apply if
12 we are not dealing with regulated asbestos containing material,
13 period. In addition, I would like to say that these are
14 arguments of law and we are here in hearing to hear evidence. I
15 am asking a question about the experience of the witness that the
16 State brought.

17 HEARING OFFICER LANGHOFF: I am going to overrule the
18 objection and let the question stand about in his experience at
19 the EPA.

20 MS. VOGEL: Thank you.

21 THE WITNESS: Since I have been at the EPA, normally if
22 someone is removing a category one nonfriable project and they
23 are removing it in nonfriable and they elect to send a courtesy
24 notification, we call it courtesy notification, it normally comes

35

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1 in through the fax and is normally not postmarked.

2 Q. (By Ms. Vogel) But there have been circumstances where
3 category one nonfriable comes in and it may not become friable
4 during the process; is that true?

5 MS. PITROLO: Again, I am going to object to this on the
6 grounds that it is not relevant to this issue. The only issue
7 before the Board at this point in time is whether or not there
8 was regulated asbestos containing material at the Highland site.

9 Not whether or not there is any such thing as a courtesy notice
10 filed with the Illinois Environmental Protection Agency.

11 HEARING OFFICER LANGHOFF: Ms. Vogel?

12 MS. VOGEL: What is she objecting to, the answer of her own
13 witness?

14 HEARING OFFICER LANGHOFF: The relevancy --

15 MS. PITROLO: Your question, Ms. Vogel.

16 HEARING OFFICER LANGHOFF: The relevancy of the question,
17 Ms. Vogel.

18 MS. VOGEL: Well, if we are allowing the first question,
19 which asks whether or not it is feasible that someone could send
20 in a notification when they don't necessarily believe it applies,
21 his answer is consistent with that and I am asking a follow-up
22 question. I am not sure, since you have already ruled in my
23 favor, what the problem is.

24 HEARING OFFICER LANGHOFF: What specifically about the

36

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1 relevancy of the question does the question have to the matter to
2 the issues before the Board?

3 MS. VOGEL: Well, the issue that we are -- I have long
4 forgotten the question and I would appreciate your reading it
5 back as soon as I am done, but the issue that we are talking
6 about is whether there was regulated asbestos containing material
7 as this facility when it was removed. We have a company that is
8 stating, as the respondent, that it was not at the facility. And

9 I am entitled to go through the cross-examination and prove the
10 point that it did not believe it was there. And one of my
11 questions relates to whether or not a courtesy notification is,
12 in fact, feasible. He said it is, in fact, feasible and that it
13 is possible that one can be sent in to the Agency, a
14 notification, when there is not necessarily RACM at the facility.
15 I think it is totally relevant.

16 MS. PITROLO: Once again, Mr. Hearing Officer, I would like
17 to respond to that.

18 HEARING OFFICER LANGHOFF: Please.

19 MS. PITROLO: The Board has already ruled that there is no
20 language in the NESHAP that refers to any such thing as a
21 courtesy notification. All notifications are to be filled out
22 under the direction of the NESHAP fully and correctly and
23 completely. There is no latitude in the NESHAP for incorrect or
24 courtesy notifications. That language is not even used. The

37

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1 Board has ruled on that already. So any line of questioning that
2 deals with a so-called courtesy notification is irrelevant
3 because that fact has already been determined by the Board.

4 HEARING OFFICER LANGHOFF: I am going to allow the question
5 and overrule the objection. The respondent has argued that there
6 is really two issues in this case, the regulated -- if there is
7 regulated ACM at this facility and any aggravating and mitigating

8 circumstances of EC&A's actions. I will allow some line of
9 questioning here.

10 Would you please read back the question.

11 (Whereupon the requested portion of the record was read
12 back by the Reporter.)

13 THE WITNESS: There is notifications that come in on
14 nonfriable. That is normally by either telephone or by fax, and
15 they indicate their removal methods and they are removing
16 nonfriable.

17 Q. (By Ms. Vogel) Mr. Grimmatt, could you describe the wet
18 removal method?

19 A. Yes. As far as the floor tile or the mastic?

20 Q. Both.

21 A. The floor tile, you water or you apply water or amended
22 water to the floor tile and then you scrape with an ice scraper
23 or a chipper to remove the floor tile. The water is used to
24 prevent emissions.

38

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1 Q. The water is used to prevent emissions?

2 A. Or help prevent.

3 Q. What is the -- you can answer this question with either
4 a definition or your own understanding. But what does adequately
5 wet mean?

6 A. To thoroughly mix to penetrate.

7 Q. Penetrate what?

8 A. Well, it depends on the type of material. If you are
9 trying to penetrate certain types of asbestos containing
10 materials, it would be to penetrate enough to depress emissions
11 at the time of removal.

12 Q. Is it possible that if the process is performed
13 correctly and wet removal is done right that no emissions might
14 result?

15 MS. PITROLO: I am going to object again, Mr. Hearing
16 Officer. This, again, is speculative and also irrelevant. The
17 only issue before the Board today is whether or not there was
18 regulated asbestos containing material on the site. It is not
19 whether or not EC&A used proper removal techniques. We are
20 not -- the State is not alleging that they used improper removal
21 techniques. We have made no insinuation of that, whatsoever.
22 The only issue is whether or not there was regulated asbestos
23 containing material at the site.

24 MS. VOGEL: Maybe we are going to need that lunch break.

39

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1 The issue before us today in this hearing is whether or not the
2 asbestos containing material became -- was RACM, regulated
3 asbestos containing material. The definition of regulated
4 asbestos containing material states that -- I really had thought
5 that we could stipulate to this, but apparently we do need to
6 read this into the record.

7 I will read the relevant part. Category one nonfriable ACM
8 that will be or has been subjected to sanding, grinding, cutting
9 or abrading. So, in other words, how the material is used or
10 treated and removed is the issue that we are here to talk about
11 so that we can -- so that the Board can determine whether or not
12 the ACM is, in fact, RACM.

13 MS. PITROLO: And Mr. Grimmatt has already testified to the
14 fact that he was not on the site to observe removal techniques,
15 so he cannot -- he cannot tell this court or this hearing, this
16 Board hearing whether or not he did view improper removal
17 techniques. Improper removal techniques are not the issue.

18 HEARING OFFICER LANGHOFF: Ms. Vogel, on the relevancy,
19 again, how does the question -- how is the question relevant to
20 the issue before the Board today?

21 MS. VOGEL: The notification provision states that the wet
22 removal technique is used. He has testified that wet removal is
23 used in order to suppress or eliminate emissions. Asbestos
24 containing material becomes a regulated asbestos containing

40

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1 material because there is a concern that emissions result. If a
2 technique is being used where the emissions do not occur, the
3 nonfriable does not necessarily become friable. And that is what
4 he is being asked about. That is the relevancy.

5 MS. PITROLO: Once again, Mr. Hearing Officer, Mr. Grimmatt
6 has testified that he was not on the site to observe whether the

7 techniques did produce friable materials. If Environmental
8 Control and Abatement, if the respondent wants to prove that,
9 they should put their own witness that was at the site on the
10 stand and question them. The only questions that were asked of
11 Mr. Grimmatt is whether the techniques that are listed on the
12 notification are consistent with regulated asbestos containing
13 material removal.

14 MS. VOGEL: I don't remember the question anymore to argue
15 about it.

16 HEARING OFFICER LANGHOFF: Would you read back the
17 question, please.

18 (Whereupon the requested portion of the record was read
19 back by the Reporter.)

20 MS. VOGEL: That does not need to be a site specific
21 question. That is a general question about the technique called
22 wet removal. Whether or not he visited the site or not does not
23 matter. He has testified that he has been involved in at least
24 50 removals.

41

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1 HEARING OFFICER LANGHOFF: Again, I am going to overrule
2 the objection and allow the question as it is relevant to the
3 issue of whether regulated ACM was at the facility.

4 MS. VOGEL: Thank you.

5 THE WITNESS: Could you read it back.

6 (Whereupon the requested portion of the record was read
7 back by the Reporter.)

8 THE WITNESS: No emissions might result and then again they
9 may. Just because there is no emissions does not mean that the
10 material is still not regulated.

11 Q. (By Ms. Vogel) If the material is not either sanded,
12 abraded, grinded or cut, is it regulated asbestos containing
13 material?

14 A. The same material is not subjected to sanding, grinding
15 or cutting or abrading?

16 Q. Correct.

17 A. That's correct, then as the -- it can be in poor
18 condition and still be a regulated material. But if it is not
19 subjected to that and it is in good condition, then it is not
20 regulated.

21 MS. VOGEL: Thank you. I have no more questions. Thank
22 you very much, Mr. Grimmett.

23 HEARING OFFICER LANGHOFF: Ms. Pitrolo?

24 MS. PITROLO: Yes. I have just a few questions on

42

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1 redirect.

2 REDIRECT EXAMINATION

3 BY MS. PITROLO:

4 Q. Mr. Grimmett, do you need to personally inspect the site
5 to determine whether there is deficiencies in a NESHAP

6 notification?

7 A. No.

8 Q. Do you need to personally inspect the site to determine
9 whether removal techniques are consistent with the removal of
10 regulated asbestos containing material?

11 A. Would you repeat that one more time?

12 Q. Yes, sir. Do you need to personally inspect the site to
13 determine whether the removal techniques, such as the ones listed
14 here in answers ten and eleven on the notification, to determine
15 whether those are consistent with removal of regulated asbestos
16 containing material?

17 A. No, I don't need to inspect it.

18 Q. Let me ask you, Mr. Grimmatt, full containment, wet
19 removal, negative air pressure, are those expensive things for a
20 contractor to do?

21 A. Yes.

22 Q. And would a contractor go to that additional expense if
23 there was no regulated asbestos containing materials present?

24 A. If it is not regulated, they don't need to have a

43

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1 containment or anything, negative pressure or anything like that.

2 Q. Okay. Thank you, Mr. Grimmatt. And section seven -- I
3 am going to return your attention to People's Exhibit Number 1,
4 section seven. Did Environmental Control and Abatement write

5 anything in that section that is not already printed on the form
6 itself?

7 A. No.

8 Q. Again, I am going to ask you to look at section seven
9 right next to the word surface area. Did Environmental Control
10 and Abatement write any words into this document?

11 A. Yes, floor tile and mastic, 2,000 square feet.

12 Q. So they did write words directly onto the form?

13 A. Yes.

14 Q. So if they wanted to, they could have written on this
15 form that there was non regulated asbestos containing material
16 present, could they not have?

17 A. Yes, they could have listed category one nonfriable.

18 Q. Did they?

19 A. No.

20 Q. Does the NESHAP require full and complete information to
21 be put on this form?

22 A. Yes.

23 Q. Complete and accurate, Mr. Grimmatt?

24 A. Yes.

44

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1 Q. You described several methods of floor tile removal, Mr.
2 Grimmatt, including beating it with a hammer. In your
3 experience, what does this do to floor tile?

4 A. It renders it friable.

5 Q. That is right. What happens when that occurs?

6 A. Then you have a regulated project.

7 Q. And in your experience, Mr. Grimmett, would you say that
8 is normally the case when floor tile and mastic is removed? It
9 is stuck to the floor, so is it difficult to pry up?

10 A. Oh, yes, it is. In my experience, yes, it is.

11 Q. And so any type of removal technique that you mentioned
12 previously, such as beating it with a hammer, would render it
13 friable?

14 A. Yes.

15 MS. PITROLO: Thank you, Mr. Grimmett. That is all.

16 HEARING OFFICER LANGHOFF: Ms. Vogel, anything else?

17 RECROSS EXAMINATION

18 BY MS. VOGEL:

19 Q. Going back to People's Exhibit Number 1, section five,
20 six, seven -- it is section seven. Is there a category on this
21 form to fill out for category one nonfriable ACM?

22 A. No, there is not.

23 Q. There is not? Thank you.

24 HEARING OFFICER LANGHOFF: Mr. Grimmett, could you please

45

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1 spell your name.

2 THE WITNESS: It is G-R-I-M-M-E-T-T. My first name is

3 Alan, A-L-A-N.

4 HEARING OFFICER LANGHOFF: Thank you, Mr. Grimmatt.

5 MS. VOGEL: Oh, I am sorry. I had an additional question.
6 I am sorry. I just have one final question. I didn't realize
7 you were getting up.

8 Q. (By Ms. Vogel) Mr. Grimmatt, you know that this project
9 was performed at a school, correct?

10 A. That's correct.

11 Q. Is it possible, in your experience, that the contractor
12 might use the full containment glove bag method to error on the
13 side of precaution, even if they believe -- even if the
14 contractor believes it is dealing with a non regulated job?

15 A. It depends on the removal technique whether I would do
16 that or not.

17 Q. If you are doing the wet removal would you do it at a
18 school, a junior high school?

19 A. If I was using -- if I was doing a wet removal method I
20 would use containment because I would be pretty sure it was going
21 to be regulated.

22 Q. So you would do it because in your opinion if you beat
23 it or abrade it or cut it might become a regulated project?

24 A. That's correct.

46

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1 MS. VOGEL: Okay. Thank you very much. That's all I have.
2 (The witness left the stand.)

3 HEARING OFFICER LANGHOFF: Ms. Pitrolo, call your next

4 witness.

5 MS. PITROLO: The People call Mr. Dale Halford.

6 HEARING OFFICER LANGHOFF: Could you swear the witness in,
7 please.

8 (Whereupon the witness was sworn by the Notary Public.)

9 D A L E H A L F O R D,

10 having been first duly sworn by the Notary Public, saith as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. PITROLO:

14 Q. Mr. Halford, would you please state your name for the
15 record.

16 A. Yes. Dale Halford, H-A-L-F-O-R-D.

17 Q. And how are you employed, Mr. Halford?

18 A. I am employed with the Illinois EPA, bureau of air, as
19 the asbestos unit manager.

20 Q. Thank you. And how long have you been in that position?

21 A. Approximately a year and a half.

22 Q. And how long have you been employed by the Illinois EPA?

23 A. A little over five years.

24 Q. And have you had specialized training or certifications

47

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1 regarding asbestos removal and abatement?

2 A. Yes, I have had a great deal of training with my

3 experience with the Capital Development Board as project manager,
4 inspector, contractor, supervisor, and various courses and annual
5 refreshers.

6 Q. Thank you, sir. Are you familiar with the People's case
7 against Environmental Control and Abatement?

8 A. Yes, I am.

9 Q. I am going to turn your attention now to Section 33 of
10 the Act which requires that the Board consider the character and
11 degree of the injury to or the interference with the health and
12 safety of the environment. Are you familiar with Section 33 of
13 the Act?

14 A. Yes, I am.

15 Q. Thank you, Mr. Halford. Why are accurate notifications
16 necessary? Why does the EPA need to rely on accurate
17 notifications?

18 A. Number one, it is required by U.S. EPA regulations, more
19 specifically in the NESHAP 61, Part 145, as well as the disposal
20 regulations. We also review those notifications as they come in
21 for accuracy. It is required to have a ten day notice to allow
22 us time to do our scheduling. It allows for delays in mail and
23 we can allocate our resources to prioritize which jobs we can
24 inspect.

48

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1 Q. The notification process, it is initiated by the
2 owner/operator, is it not?

3 A. Yes, it is required to be notified to the Illinois EPA
4 by the owner/operator.

5 Q. And you depend on the truthfulness and accuracy of those
6 notifications, do you not?

7 A. Yes, we do. That's the only way of finding out what is
8 going on out at the projects.

9 Q. So how would you allocate resources and time based on
10 those notifications that you receive?

11 A. If we see a notification that has faulty information in
12 it then we may prioritize our inspection efforts on those
13 projects.

14 Q. So you would determine on where to inspect based on the
15 severity of what is shown in the notification; is that correct?

16 A. Sure, and the size of the project, locations, various
17 aspects.

18 Q. So, in your opinion, as asbestos unit manager, Mr.
19 Halford, are these just minor, picky, over-technical
20 requirements?

21 A. No, they are very important requirements. It gives us a
22 chance to look at basically, number one, what the job entails,
23 you know. Is it dealing with friable asbestos, is it regulated,
24 are the correct procedures being used, has the facility been

1 inspected, the whole gamut of the questions on there are very

2 relevant to our success.

3 MS. PITROLO: Thank you, Mr. Halford. I have no further
4 questions of this witness.

5 CROSS EXAMINATION

6 BY MS. VOGEL:

7 Q. Mr. Halford, was an inspection by the EPA ever conducted
8 at the Highland Junior High School facility of the work that was
9 performed by EC&A?

10 A. I don't believe so. That was before I was employed with
11 the asbestos unit.

12 Q. But you are familiar with the case and you are not aware
13 that one ever took place?

14 A. Correct.

15 Q. Are you aware of the start date that the EC&A notified
16 the Agency of?

17 A. In my review of the notification --

18 MS. PITROLO: Once again, Mr. Hearing Officer, I am going
19 to have to object to that. The Board has already ruled that the
20 notification that was issued for the Highland site was untimely
21 if, indeed, there was regulated asbestos containing material at
22 the site. So the only issue before the Board today is whether or
23 not there was regulated asbestos containing material present, not
24 whether or not this was timely. The Board has already ruled that

50

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1 it was not.

2 HEARING OFFICER LANGHOFF: Ms. Vogel?

3 MS. VOGEL: Counsel is so premature. This has nothing to
4 do with timely. She was asking him about penalty factors in
5 terms of whether or not an inspection was allowed to take place,
6 and I would like to ask him and have asked him about whether an
7 inspection did take place and whether there was sufficient amount
8 of time given for the Agency to conduct an inspection.

9 HEARING OFFICER LANGHOFF: I will overrule the objection.

10 MS. VOGEL: Thank you.

11 Q. (By Ms. Vogel) Mr. Halford, are you aware of the start
12 date that was provided to the Illinois EPA on the notification
13 for this facility?

14 A. I reviewed it some time ago.

15 Q. Would you like to refresh your memory by looking at
16 People's Exhibit Number 1?

17 A. Sure, that would be great.

18 Q. I call your attention to section eight of People's
19 Exhibit Number 1. Could you read, Mr. Halford, the start date
20 that is indicated there?

21 A. The start date indicates asbestos removal, start date
22 05-28-91, complete on 06-11-91.

23 MS. VOGEL: Thank you. At this time, Mr. Hearing Officer,
24 I would like to introduce as Respondent's Exhibit Number 1 -- is

1 Number 1 the appropriate number?

2 HEARING OFFICER LANGHOFF: That's fine.

3 MS. VOGEL: And my hope is that the State has a copy of
4 this.

5 MS. PITROLO: No, I do not.

6 MS. VOGEL: Well, I bet you do. This is the revised
7 notification that has been exchanged by the parties in the
8 motions in this case about three or four times.

9 MS. PITROLO: Once again, Mr. Hearing Officer, this revised
10 notification was submitted by the respondent as an exhibit to its
11 motion for summary judgment. I will repeat the Board's order.
12 It is undisputed that the notice submitted by EC&A was postmarked
13 May 16th, 1991, for a project which began on May 28th, 1991.
14 There were two weekends between May 16th and May 28th, 1991.
15 Thus, the notice was postmarked less than ten working days prior
16 to the date the work began.

17 Failure to provide notice postmarked at least ten working
18 days prior to commencement of work is a violation of 40 CFR
19 61.145 (b)(3)(1). Therefore, anything that shows a revised
20 notification which, for the record, was not received by the State
21 of Illinois, is irrelevant at this time.

22 HEARING OFFICER LANGHOFF: Are you going to object to the
23 introduction of the --

24 MS. PITROLO: I am objecting, Mr. Hearing Officer.

1 HEARING OFFICER LANGHOFF: Of the exhibit?

2 MS. PITROLO: Yes, Mr. Hearing Officer, I am objecting.

3 HEARING OFFICER LANGHOFF: Ms. Vogel?

4 MS. VOGEL: Well, I would ask the Hearing Officer to rule
5 on the admissibility of this document. This document has been
6 exchanged between the parties on repeated occasions and, in fact,
7 if my memory serves me correct, it was attached by the State as
8 an exhibit to the State's motion for summary judgment.

9 MS. PITROLO: It was attached by the respondent to the
10 respondent's motion for summary judgment and given due weight by
11 the Board, and I have read to you the assessment by the Board of
12 that situation.

13 MS. VOGEL: Well, there has never been an objection prior
14 until now, until the introduction of this document. As to its
15 relevance to this proceeding prior to the hearing, if the
16 document would have made its way to the State by virtue of being
17 a revised notification, and I suppose I am not really
18 understanding why it is that the State does not want the Board to
19 see the documents that have been in the State's records.

20 MS. PITROLO: Mr. Hearing Officer, let me respond to that.
21 It is also in the Board's record. It was attached as an
22 attachment to the Respondent's --

23 MS. VOGEL: Well, then if it is in the Board's record, what
24 is the objection?

1 MS. PITROLO: Just one moment, Ms. Vogel, and I will
2 complete my statement if you would cease interrupting me.

3 The problem with having that admitted at this point in time
4 is it is not relevant to today's proceeding. The Board has
5 already ruled that the Highland notification was untimely. The
6 only thing that revised notification changes over the original
7 notification is the date of the beginning of work. The Board --

8 MS. VOGEL: Exactly.

9 MS. PITROLO: The Board has already ruled that the date of
10 beginning work was untimely, that it was -- that EC&A failed to
11 provide notice postmarked at least ten days in advance prior to
12 commencement of work in violation of 40 CFR 61.145.

13 HEARING OFFICER LANGHOFF: Thank you, Counsel. I am going
14 to overrule your objection and allow the introduction at the
15 proper time of the document.

16 MS. VOGEL: Thank you. For the record, I am introducing
17 Respondent's Exhibit Number 1.

18 (Whereupon said document was duly marked for purposes of
19 identification as Respondent's Exhibit 1 as of this date.)

20 Q. (By Ms. Vogel) Mr. Halford, can you take a moment to
21 review the document and let me know when you have had enough
22 time?

23 A. (The witness reviewing document.) Okay. I have looked
24 it over.

1 Q. Thank you. Can I call your attention to section number
2 eight?

3 MS. PITROLO: My apologies. I am going to have to go look
4 at this, Mr. Hearing Officer, because I was not provided with a
5 copy.

6 Q. (By Ms. Vogel) It is section eight.

7 A. Section eight?

8 Q. Yes. Can you please read me what section eight states?

9 A. Section eight was where it was crossed out. There is a
10 section eight added on the bottom. It says scheduled dates have
11 changed to 06-14-91 through 06-28-91. And the postmark on that
12 was 06-16, so it is after the -- it is posted after the -- the
13 work was changed before the postmark, apparently.

14 MS. PITROLO: Mr. Hearing Officer, once again after closer
15 review of this document, I am going to have to object again.
16 There has been no foundation laid for this document. I have no
17 evidence as to who submitted this document, to whom it was
18 submitted. As I have already stated, the EPA does not have this
19 document in its files and I have no issue of validity of that
20 document.

21 MS. VOGEL: I apologize. I didn't realize we were going to
22 go through those steps since he overruled your objection to the
23 admissibility of the document.

24 MS. PITROLO: The document -- I have never objected to the

1 document's admissibility on the basis of foundation, Ms. Vogel.

2 HEARING OFFICER LANGHOFF: I am going to sustain her
3 objection on the foundation of the document at this time.

4 MS. VOGEL: I would like to reserve the right to re-raise
5 this issue, because I will be calling Mr. Lemire to the stand and
6 I will go through the foundation steps with him since it was his
7 company that provided the revised notification to the State.

8 I also will reserve the right to demonstrate that the
9 document is in the State's records, and I would also like to
10 state that I think it is extraordinarily egregious for the State
11 to come in here and say it is not in the record at this time and
12 it is almost bordering on bad faith.

13 HEARING OFFICER LANGHOFF: It is noted.

14 Q. (By Ms. Vogel) Mr. Halford, are you aware of what the
15 actual date of work was for the project at Highland?

16 A. No. I assumed it was as stated on the notice.

17 Q. On the -- on which notice?

18 A. The original was the only one that I saw.

19 Q. So you assumed that it was what date?

20 A. I assumed it was the 28th date.

21 MS. VOGEL: Okay. Thank you. I have no more questions for
22 Mr. Halford.

23 MS. PITROLO: Mr. Hearing Officer, I just have two
24 follow-up questions.

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REDIRECT EXAMINATION

BY MS. PITROLO:

Q. Mr. Halford, if the Illinois Environmental Protection Agency receives a late notification, does that impact its ability to inspect?

A. Yes. If it is received late sometimes the work could be done before we could arrange for an inspector to be on the site.

MS. PITROLO: Thank you, Mr. Halford. That's all I have.

HEARING OFFICER LANGHOFF: Ms. Vogel?

MS. VOGEL: I have no further questions. Thank you.

HEARING OFFICER LANGHOFF: Thank you, Mr. Halford.

THE WITNESS: Thank you.

(The witness left the stand.)

HEARING OFFICER LANGHOFF: Ms. Pitrolo, do you have any other witnesses?

MS. PITROLO: That concludes the People's case.

HEARING OFFICER LANGHOFF: Thank you. Ms. Vogel?

MS. VOGEL: Mr. Hearing Officer, may we take a 15 minute break?

HEARING OFFICER LANGHOFF: Certainly. We will reconvene at a quarter till 1:00.

(Whereupon a short recess was taken.)

HEARING OFFICER LANGHOFF: Before we move on to the respondent's case-in-chief I would like to ask the State if there

1 is any exhibits that they would like to offer.

2 MS. PITROLO: Yes, Mr. Hearing Officer. The State would
3 like to move People's Exhibit Number 1 into the record.

4 (Whereupon said document was admitted into evidence as
5 People's Exhibit 1 as of this date.)

6 HEARING OFFICER LANGHOFF: Ms. Vogel.

7 MS. VOGEL: Thank you. At this time I would like to call
8 Bill Lemire to the stand.

9 HEARING OFFICER LANGHOFF: Mr. Lemire, you are still under
10 oath.

11 THE WITNESS: Yes. Thank you.

12 (Whereupon the witness was previously sworn by the Notary
13 Public.)

14 W I L L I A M A. L E M I R E,
15 having been previously duly sworn by the Notary Public, saith as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. VOGEL:

19 Q. Let's go ahead and tackle this documentation issue first
20 before we get into questions about the case. You might recall
21 that prior to the break I had called Mr. Halford to the stand to
22 ask him a question about what his understanding as to the actual
23 start date for this project was and that there was a flurry of
24 discussion about whether that document could be admitted into the

1 record.

2 At this time I would like to offer as an exhibit, subject
3 to foundation requirements, a document that is marked as
4 Respondent's Exhibit Number 1. I would like to show the witness
5 that document.

6 Would you like to see this document again, Counsel?

7 MS. PITROLO: Yes, I would.

8 Q. (By Ms. Vogel) At this time I would like to show the
9 document to Mr. Lemire. Mr. Lemire, what is the title of that
10 document?

11 A. Revised notification and it applies to the Highland
12 Junior High School project. It is indicating that the start
13 dates had changed.

14 Q. And are you aware of when this revised documentation may
15 have been -- who it might have been filled out by in the company?

16 A. It probably would have been prepared by Janie Geiger.

17 Q. Is that document a copy of the original revised
18 notification that is marked up or is it merely -- is it a second
19 document altogether?

20 A. It appears to be the initial document that has been
21 modified to reflect the different project dates.

22 Q. What would the circumstances have been that that
23 document would have even been created?

24 A. A schedule change in the work to be done at the

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1 facility.

2 Q. Okay. And have you ever seen this document before?

3 A. Yes, it has been in our possession.

4 Q. In whose possession?

5 A. The company, EC&A's possession.

6 Q. EC&A's possession?

7 A. Yes.

8 Q. And would you have seen that document when it was
9 originally created?

10 A. I believe so. It has been nine years. I believe I
11 would have seen it.

12 Q. Okay. What is your understanding as president of EC&A,
13 what the purpose of generating this document was?

14 A. The purpose of generating this document, which we
15 believe this was a complimentary or courtesy document to the
16 State. It was to alert them that the project performance dates
17 were different than those of which they were initially notified.

18 Q. Do you have actual knowledge of whether or not that
19 document was ever sent to the Illinois Environmental Protection
20 Agency by EC&A?

21 A. I believe it had been, yes.

22 Q. Okay. Is there a postmark date on the document?

23 A. I don't see one.

24 Q. There is no mark on there?

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1 A. No.

2 Q. Did you -- would it have been a practice of your company
3 to have sent those in each and every time that the start date
4 changed on any project?

5 A. Yes.

6 Q. So while you can't say for certain because there is no
7 postmark date on that document, it is your understanding that
8 that document was sent to the EPA?

9 A. That's correct.

10 MS. VOGEL: Okay. At this time I would like to offer this
11 document as Respondent's Exhibit Number 1, as the witness is
12 familiar with the document, has seen the document, and it is in
13 his records and, therefore, it is an appropriate business record.

14 MS. PITROLO: Yes, Mr. Langhoff. I would like to object to
15 that. In the first place, I would like to object because Mr.
16 Lemire stated that it was probably Janie Geiger that filled this
17 document out. He was not sure. He said he believed it had been
18 sent to the State of Illinois. He was not sure. It has no
19 postmark date on it. It is a xerox copy of the original document
20 that was offered in by the People, and he does not know when it
21 was prepared or by whom it was prepared.

22 So I object to the introduction of this document based on
23 its authenticity. I also object, and this is my continuing
24 objection, on its relevance. The Board has already seen this

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1 document. It was attached as Exhibit N to the respondent's
2 motion for summary judgment. In the Board's order dealing with
3 that motion for summary judgment specific to the Highland site,
4 the Board has stated that the notice was postmarked less than ten
5 working days prior to the date the work began. This revised
6 document, the only thing it purports to do is change the start
7 date, and the Board has already ruled on that, that it was
8 untimely.

9 HEARING OFFICER LANGHOFF: Ms. Vogel, as to the relevancy
10 of the document, what is your argument?

11 MS. VOGEL: This document, if the witness is allowed to
12 answer a question about it, does not have -- I am not offering
13 this document for the purposes of showing that the notifications
14 are timely or untimely. I am simply attempting to establish a
15 time period of when the notice was given and when the work was
16 performed.

17 MS. PITROLO: Why else would you want it admitted if it is
18 not for the purposes of showing whether the notice is timely or
19 not.

20 MS. VOGEL: If the matter is resolved, Counsel, by the
21 Board, then it does not matter what I am trying to show, does it,
22 to you. What I am trying to do is go to the issues of penalty
23 which we are here to discuss.

24 MS. PITROLO: Once again, Mr. Langhoff --

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1 MS. VOGEL: And I have to be allowed to provide evidence as
2 to aggravating and mitigating factors under Section 33 (c) and 42
3 of the Act.

4 MS. PITROLO: Once again, Mr. Langhoff, if it is admitted
5 only for the purposes of penalty and not for its relevance on
6 whether the initial notification was issued timely or not, I
7 would again object because there is no authenticity to the
8 document. It is a xerox copy of the original document provided
9 by the State. As Mr. Lemire stated, he is unsure as to who
10 filled it out. It has no postmark. And he believes it was sent
11 to the EPA. You have heard Mr. Halford testify that it is not in
12 the record.

13 MS. VOGEL: Okay. This is repetitive. How can I possibly
14 give you an authentic document when it is in your possession and
15 all I have is copies. I mean, it is an impossible situation that
16 you are arguing. I can't do it. The document was provided
17 pursuant to an affidavit by Betsy Kirchoff (spelled phonetically)
18 and is an attachment to a memorandum that I provided the Board.
19 The State did not object to that document. It did not argue
20 about the authenticity of that document at the time the
21 memorandums were admitted. Therefore, it is in the Board's
22 possession, therefore, what is the harm in having the document as
23 part of the record.

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1 Pitrolo, I am going to overrule your objections and I am going to
2 overrule your objection as to the authenticity of the document
3 under the business record. I am also going to overrule your
4 objection as to the relevancy of the document, as it does address
5 the aggravating and mitigating issues in this case.

6 MS. VOGEL: Thank you. I offer, then, the document that is
7 the revised notification as Respondent's Exhibit Number 1.

8 (Whereupon said document was admitted into evidence as
9 Respondent's Exhibit 1 as of this date.)

10 Q. (By Ms. Vogel) Mr. Lemire, can you please read for me
11 the section XVI?

12 A. Yes.

13 Q. It is hard to read it upside down. What is that section
14 number, please? Is it 16?

15 A. It is 16 in Roman Numerals.

16 Q. Could you please read the information as to the new
17 start date?

18 A. The new start date?

19 Q. Let me have the document back for a second, please. I
20 apologize. Could you please read for me section number eight.

21 A. Schedule dates, asbestos removal. The initial -- the
22 original dates of 05-08-91 to -- I would have to look at the
23 other document. The original dates have been stricken and with

24 new dates added and reads scheduled dates have changed to

64

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1 06-14-91 to 06-28-91.

2 Q. Thank you. So the actual start date of this project, as
3 you understand this notification, is what date?

4 A. 06-14.

5 Q. Thank you very much. That's all of the questions I have
6 on that issue.

7 Now, Mr. Lemire, how many asbestos removal projects --
8 asbestos containing material removal projects have you performed
9 in the course of your career?

10 A. Over 1,000, I would say.

11 Q. And in your experience, is it always the case when
12 asbestos containing material is removed, specifically category
13 one nonfriable that it becomes friable in each and every
14 instance?

15 A. No.

16 Q. Could you please describe circumstances under which it
17 does not become friable, category one?

18 A. If appropriate methods are used to avoid grinding,
19 cutting, abrading it, tools that would cause that to happen, and
20 correct and certain wetting agents are used in the case of floor
21 tile and mastic, mastic removal compounds, that will attach
22 themselves to the mastic and turn it into a gummy mass it is by

23 definition friability could not occur.

24 Q. Why couldn't it occur?

65

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1 A. Well, because the -- there is no way to make powder out
2 of soup.

3 Q. What type of liquids are used in the wet removal method?

4 A. With regard to floor tile?

5 Q. Yes.

6 A. There are special solvents that are used to penetrate
7 the mastic.

8 Q. And when it penetrates the mastic, what happens to the
9 mastic?

10 A. The mastic is diluted and removed just as a paint
11 stripper is used.

12 Q. So how do you remove mastic then once you wet the
13 mastic?

14 A. How do you remove it?

15 Q. Yes.

16 A. With spud bars, with hand tools, with mops, rags.

17 Q. And when you remove floor tile, how do you remove the
18 floor tile and, specifically, how did you remove the floor tile
19 in this case at the Highland Junior High?

20 A. With spud bars. The tile is considered to be in good
21 condition and could be taken off intact without breaking it or
22 rendering it friable in the process.

23 MS. PITROLO: Mr. Hearing Officer, I am going to object to
24 this line of questioning. Respondent's counsel has not even

66

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1 established whether Mr. Lemire was at the Highland site. So
2 whether or not there was regulated asbestos containing material
3 at the Highland site is not shown on firsthand knowledge because
4 he was not there or he has not said that he was there.

5 HEARING OFFICER LANGHOFF: I will sustain.

6 MS. VOGEL: I did not get a chance to answer.

7 HEARING OFFICER LANGHOFF: I am sorry.

8 MS. VOGEL: I was about to say that my question went more
9 to the issue of generalities, how is it removed and I asked if
10 you can about this site, but he didn't. He answered generally.

11 HEARING OFFICER LANGHOFF: I am going to sustain the
12 objection. The question was specific about the site.

13 MS. VOGEL: Okay. Thank you.

14 Q. (By Ms. Vogel) Mr. Lemire, how --

15 May I please ask the court reporter to read back my
16 question.

17 HEARING OFFICER LANGHOFF: Would you please read back the
18 question.

19 (Whereupon the requested portion of the record was read
20 back by the Reporter.)

21 Q. (By Ms. Vogel) When you remove floor tile, how do you do

22 it?

23 A. To render it -- to keep it from being rendered friable,
24 we would use a solvent that I just discussed or described that

67

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1 will penetrate the mastic, and the tile is taken up intact -- it
2 has to be in good condition to begin with -- in whole pieces, and
3 by use of a spud bar or other hand tools.

4 Q. Thank you. Now, turning your attention to People's
5 Exhibit Number 1 -- I am showing the witness a copy of People's
6 Exhibit Number 1 to refresh his recollection.

7 Is there any information on this notification that tells
8 you that at this specific facility that the material being
9 removed was not regulated asbestos containing material?

10 A. Is there anything on -- no.

11 Q. Nothing? What about section number 11, the use of wet
12 removal?

13 A. And your question is?

14 Q. Does anything -- does the use of wet removal tell you
15 anything about whether or not the material being removed is
16 regulated asbestos containing material?

17 A. No.

18 Q. It doesn't?

19 A. No.

20 Q. Do you use wet removal in every asbestos removal project
21 that you perform?

22 A. Yes.
23 Q. Yes? Whether it is friable or not friable?
24 A. That's correct.

68

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1 Q. So when you use wet removal, to you that does not
2 necessarily tell you that it is regulated asbestos containing
3 material, does it?

4 A. No.

5 Q. And why is it that you use wet removal every time you do
6 an asbestos removal project?

7 A. As a precaution and just the nature of the materials
8 used in floor tile removal implies wet removal, the use of the
9 penetrating solvents and to cover the materials, the tile and the
10 mastic before they are removed.

11 Q. If you were going to sand or abrade or cut the floor
12 tile, what type of information would you have provided on this
13 notice?

14 A. I would have indicated as such.

15 Q. What would you have said?

16 A. Sanding or abrasive or cutting with power saws.

17 Q. Rather than using wet removal?

18 A. I would have put the wet removal down there as well.

19 Q. Okay. On this project, did you, Mr. Lemire, ever visit
20 the Highland Junior High site?

21 A. No, I did not.
22 Q. You did not?
23 A. Not to my recollection.
24 Q. Do you recall the name of the employee who did?

69

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1 A. I believe it was Jeff Lobner, who was our project
2 estimator at the time.
3 Q. Okay. Did Jeff Lobner visit the site?
4 A. Yes, he would have.
5 Q. Okay. If sanding, abrading or cutting would have been
6 performed of the floor tile of this site, what -- would Jeff
7 Lobner have told you that?
8 MS. PITROLO: I will object to that, Your Honor.
9 Respondent's counsel is asking for hearsay. That is the
10 definition of hearsay. She is asking him to tell her what Jeff
11 Lobner told him.
12 HEARING OFFICER LANGHOFF: Ms. Vogel.
13 MS. VOGEL: He can't testify to a conversation he was in?
14 MS. PITROLO: No, he cannot. That is hearsay, Ms. Vogel.
15 MS. VOGEL: He was in the conversation.
16 MS. PITROLO: Ms. Vogel, hearsay is stating what another
17 person said to you, and that is the definition, the textbook
18 definition of hearsay.
19 HEARING OFFICER LANGHOFF: I am going to sustain the
20 objection.

21 MS. VOGEL: I would like to state for the record that that
22 on the basis is an appealable point right there. He is allowed
23 to testify as to a conversation that he participated in.

24 HEARING OFFICER LANGHOFF: I have made my ruling on that

70

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1 question.

2 Q. (By Ms. Vogel) At a site that requires the use of
3 sanding, abrading or cutting equipment, does your company have
4 that equipment in-house?

5 A. No.

6 Q. So what do you need to do in order to perform that type
7 of method?

8 A. Often rent it or buy it.

9 Q. Are you aware that for this project if your company ever
10 had to do that?

11 A. No.

12 MS. VOGEL: Mr. Hearing Officer, I would like to take a
13 break from the record, if I might.

14 HEARING OFFICER LANGHOFF: Certainly.

15 MS. VOGEL: I need to consult with my client and I would
16 also like to take a moment to check on something.

17 HEARING OFFICER LANGHOFF: Certainly. We will take five
18 minutes.

19 MS. VOGEL: May I have ten minutes?

20 HEARING OFFICER LANGHOFF: We will take a ten minute recess
21 and we will be back at a quarter after 1:00.

22 MS. VOGEL: Thank you.

23 (Whereupon a short recess was taken.)

24 HEARING OFFICER LANGHOFF: We are back on the record.

71

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1 MS. VOGEL: Thank you for the recess. I appreciate that.

2 Q. (By Ms. Vogel) Mr. Lemire, when a full containment
3 system is used during a removal, why is that the case?

4 A. To prevent fibers from the inside being -- going outside
5 the contained area or actually in some cases to be sure that the
6 area stays clean in the possible event of contamination on the
7 outside which we have experienced in industrial areas.

8 Q. Okay. This removal project was performed at a school.
9 Why did you use a full containment system at this particular
10 project?

11 A. Because it was a school and we always error on the side
12 of being extra careful. There is a good chance that other areas
13 of the school are occupied at the time that we are doing our
14 work.

15 MS. PITROLO: I am going to move to strike the respondent's
16 answer to that question, the witness' answer to that question.
17 Mr. Lemire has testified that he was not on the site, so he does
18 not know of his own knowledge whether full containment was used
19 because he never visited the Highland site to see whether full

20 containment was used.

21 MS. VOGEL: Mr. Hearing Officer, he is the president of the
22 company.

23 MS. PITROLO: That still does not give him firsthand
24 knowledge of what occurred at the Highland site.

72

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1 MS. VOGEL: This question is not a question about what
2 occurred at the Highland site. The question is why is a full
3 containment system used at a school.

4 HEARING OFFICER LANGHOFF: I am going to overrule the
5 objection, Counsel.

6 MS. PITROLO: Mr. Langhoff, can I have the question read
7 back, then?

8 HEARING OFFICER LANGHOFF: Would you read back the
9 question, please.

10 (Whereupon the requested portion of the record was read
11 back by the Reporter.)

12 MS. PITROLO: Mr. Langhoff, I will renew my objection. The
13 question was, this removal project was performed at a school.
14 Why was full containment used at that school. Mr. Lemire has
15 testified that he wasn't at the school. He does not know whether
16 full containment was used there or not of his own personal
17 knowledge.

18 HEARING OFFICER LANGHOFF: Thank you, Counsel. Ms. Vogel.

19 Q. (By Ms. Vogel) Mr. Lemire, do you have personal
20 knowledge of whether or not full containment was used at this
21 school?

22 A. I believe that it had been. This is the way that we had
23 planned to perform the project.

24 MS. PITROLO: Again, Mr. Langhoff, the witness has just

73

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1 stated, I believed it had been. But he does not, of his own
2 personal knowledge, know that it was used.

3 HEARING OFFICER LANGHOFF: I am going to reconsider my
4 ruling in sustaining that objection and -- excuse me -- in
5 overruling that objection. I am going to sustain that objection
6 based on the question as it was read back, that Mr. Lemire was
7 not at the school, since it was a site specific question.

8 MS. VOGEL: Okay.

9 Q. (By Ms. Vogel) Mr. Lemire, why are full containment
10 systems used at schools?

11 A. To contain the fiber on the inside of the work area and
12 in some cases to prevent incursion of contamination from the
13 outside, and in the case of schools, hospitals or other
14 facilities, where utmost care has to be taken, we would rather
15 error on the side of caution. This is the reason why
16 containments are used in those type of circumstances.

17 Q. So did your company, when it was in operation, did it
18 always use full containment systems in schools when it did

19 projects in schools?

20 A. If the specifications called for that, or if the
21 buildings were occupied, if there was any potential problem with
22 incursion of contamination from the outside all taken together
23 that would have been the policy.

24 Q. Thank you. Mr. Lemire, do companies or schools or

74

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1 government or this type of entity, when they retain EC&A or they
2 did retain EC&A to perform an asbestos removal project or to --
3 to perform an asbestos removal project, and it is not regulated
4 material, why do they hire an asbestos removal contractor?

5 MS. PITROLO: I am going to go ahead and object to that,
6 Mr. Hearing Officer, as being highly speculative. I think I
7 counted six if's in that question.

8 HEARING OFFICER LANGHOFF: Ms. Vogel.

9 Q. (By Ms. Vogel) Mr. Lemire, why do companies hire EC&A to
10 perform the asbestos removal projects when the material is not
11 RACM?

12 A. Because of the potential that the material could become
13 regulated if not properly removed and even if the material itself
14 is not regulated in the removal process the disposal of it is
15 under NESHAPs.

16 Q. Was EC&A ever hired to remove floor tile and mastic when
17 it was not ACM, asbestos containing material?

18 MS. PITROLO: Again, I am going to object to that question.
19 If it wasn't even asbestos containing material, that has
20 absolutely no relevance to this discussion, whatsoever.

21 HEARING OFFICER LANGHOFF: Counsel.

22 MS. VOGEL: I think that the objections are becoming absurd
23 at this point. I am asking what does EC&A do and under what
24 circumstances it is hired for.

75

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1 HEARING OFFICER LANGHOFF: As to the relevancy of the
2 question?

3 MS. VOGEL: I would like to know if EC&A and I would like
4 for the Board to know whether EC&A ever performed removal
5 projects of floor tile when it is not ACM.

6 THE WITNESS: You mean if it is not proven to be ACM or
7 assumed to be --

8 HEARING OFFICER LANGHOFF: Mr. Lemire.

9 THE WITNESS: I am sorry.

10 HEARING OFFICER LANGHOFF: I am going to sustain the
11 objection on the grounds of the relevance of the question to the
12 issues before the Board.

13 MS. VOGEL: I would like to make a reservation of right to
14 reargue that. I believe that when Mr. Lemire took the stand
15 initially Counsel for the State asked multiple questions as to
16 what EC&A does and what his experience is and I believe this
17 question is very consistent with that. And it is very

18 unreasonable to not allow him to answer whether or not he
19 performs floor removal projects. It is a very simple question.

20 HEARING OFFICER LANGHOFF: That was not the question,
21 Counsel. I have made my ruling. You can ask another question.
22 And your argument can be argued before the Board in your post
23 hearing briefs.

24 Q. (By Ms. Vogel) What are some other wet removal -- some

76

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1 other removal methods other than wet removal?

2 A. Dry removal.

3 Q. What does that consist of?

4 A. Not using water or wetting agents. Those type projects
5 are very unusual, because they require special permission from
6 the federal U.S. EPA.

7 Q. Okay. When EC&A is making a determination of what type
8 of removal method to use to removal floor tile, would you say
9 that there is professional judgment that is involved with that
10 determination?

11 A. Yes.

12 Q. Generally a person with experience with floor tile
13 removal in performing both RACM removal and ACM removal would
14 make that determination?

15 A. Yes.

16 Q. And you hired -- did you actually hire Jeff Logner?

17 A. Yes, I did.
18 Q. What was his title at your company?
19 A. Vice president of operations.
20 Q. And what was his job? What did he do for your company?
21 A. He was in charge of estimating and setting up projects.
22 Q. And how many projects did Jeff probably supervise for
23 you?
24 A. In a three year period of time, probably 200.

77

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1 Q. Mr. Lemire, why did EC&A mark off on People's Exhibit
2 Number 1 the column in section seven, RACM to be removed? Why is
3 the figure 2,000 square feet written in there?
4 A. Because that was the total amount of floor tile and
5 mastic to be removed on the project.
6 Q. Why was it written in under the column regulated
7 asbestos --
8 A. There is no other column to put down in which to list
9 the material.
10 Q. So you were the president of EC&A in 1991?
11 A. That's correct, yes.
12 Q. And is it your understanding -- how long -- how much
13 time passed between when the federal regulation came into effect
14 and when that form was filled out?
15 A. A few months.
16 Q. Did have you a clear understanding of the circumstances

17 under which this form was required to be sent into the State at
18 that time?

19 A. These were new. We knew that regulated projects had to
20 be prenotified with the appropriate period of time with non
21 regulated projects. Until we got a clear definition we generally
22 sent in courtesy or complimentary notifications.

23 Q. Why would you do that?

24 A. Well, I think the issue of public knowledge, whenever

78

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1 you are dealing with schools or other employees of the school,
2 and as the title implies, courtesy, it is a courtesy to the
3 regulators so that if they get a call from local residents asking
4 what is going on in their particular school or their district,
5 they are in a position to respond.

6 Q. Thank you. In each instance when -- Mr. Lemire, this
7 case involved five sites that the State alleged that there were
8 violations? I won't go through each site, but I will ask you
9 generally, is it true that you received a compliance inquiry
10 letter from the Illinois Environmental Protection Agency in each
11 instance?

12 A. In five separate occasions.

13 Q. Okay. Five separate occasions.

14 A. Yes.

15 Q. What did EC&A do to respond to those compliance inquiry

16 letters?

17 A. First I would call Otto Kline, who was Mr. Halford's
18 predecessor and discuss with him if a meeting was advisable, as
19 is stipulated or indicated in the compliance inquiry letter.

20 MS. PITROLO: Mr. Hearing Officer, I am going to have to
21 object to the witness' answer in this question. Once again, this
22 is hearsay. He is testifying to a conversation with Mr. Otto
23 Kline. If respondent wanted to have Mr. Otto Kline's response to
24 Mr. Lemire's telephone call admitted into evidence, they could

79

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1 have called Mr. Kline to the stand. They did not.

2 HEARING OFFICER LANGHOFF: Ms. Vogel.

3 MS. VOGEL: What was the question? I am sorry.

4 MS. PITROLO: No, it is an objection. My objection is
5 hearsay.

6 MS. VOGEL: No, I am asking the court reporter what the
7 question was that I asked.

8 HEARING OFFICER LANGHOFF: Would you read back the
9 question, please.

10 (Whereupon the requested portion of the record was read
11 back by the Reporter.)

12 MS. PITROLO: Again, Mr. Hearing Officer, I am going to
13 have to request that if the witness is to respond to that
14 question that he limit his testimony to matters of his own
15 knowledge and not to hearsay of what Mr. Otto Kline may or may

16 not have said. Mr. Kline is not in court.

17 MS. VOGEL: Well, that is what I asked him, asked Mr.
18 Lemire. I asked what did he do to respond to these compliance
19 inquiry letters, and he is testifying as to his understanding and
20 as to what he did.

21 HEARING OFFICER LANGHOFF: Mr. Lemire, you may answer the
22 question as it was asked.

23 THE WITNESS: Do you want me to repeat the answer?

24 MS. VOGEL: I think his -- your answer was fine. Does

80

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1 anyone else need it repeated?

2 MS. PITROLO: I would like to have the answer read back for
3 the purposes of clarification.

4 (Whereupon the requested portion of the record was read
5 back by the Reporter.)

6 MS. PITROLO: I will withdraw my objection.

7 HEARING OFFICER LANGHOFF: Okay. I believe the question
8 has been asked and answered Ms. Vogel.

9 Q. (By Ms. Vogel) So, Mr. Lemire, for each of the five
10 sites, did you ever have a meeting with the EPA?

11 A. No.

12 Q. Why not?

13 A. Because Mr. Kline said it is not necessary.

14 MS. PITROLO: Okay. Mr. Hearing Officer, that is hearsay.

15 Mr. Kline said it was not necessary, that is hearsay.

16 MS. VOGEL: Well, Counsel, there is an exception to the
17 hearsay rule of an admission against interest of a party opponent
18 and this falls clearly textbook under the exception.

19 MS. PITROLO: Once again, hearsay is an out-of-court
20 statement made for the purposes of supporting the fact for which
21 it was offered. Mr. Lemire is making a statement for the
22 purposes of which he is trying to support the fact for which it
23 is offered. This is hearsay.

24 HEARING OFFICER LANGHOFF: Okay. I am going to overrule

81

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1 the objection on an exception to the hearsay rule, and also I
2 believe it to be evidence which is -- well, only on the hearsay
3 exception.

4 Q. (By Ms. Vogel) Could you restate, Mr. Lemire, whether or
5 not -- I am sorry -- whether or not a meeting was held with the
6 Agency?

7 A. No, no meetings were held with the Agency.

8 Q. Why not?

9 A. Mr. Kline said it was not necessary.

10 Q. Okay. What is your -- what is your understanding of why
11 it was not necessary?

12 A. My understanding was that it was not a serious matter
13 and that as a follow-up I should merely write a letter to him.

14 Q. And did you write a letter to --

15 A. In every case.

16 Q. In each and every case. And in each and every case
17 after you wrote that letter -- well, let's take them one at a
18 time. After you wrote the letter to Otto Kline, in each case did
19 you ever hear again from the Agency as to the alleged violations
20 or that they were displeased with how you planned to handle the
21 alleged violations?

22 A. Not for several years.

23 Q. When did you first hear that they had not felt that the
24 violations or the alleged violations at all five sites had been

82

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1 resolved?

2 A. I received a letter of complaint, I believe that is what
3 it is called, sometime in early 1995.

4 Q. And when did the Highland project end, what year?

5 A. 1991.

6 Q. In 1991. Did you have a trade association or any type
7 of assistance for anyone to help you comply with the new NESHAP
8 requirements?

9 A. There was an organization called the National Asbestos
10 Council to which I belonged and they had annual meetings and they
11 would discuss general rules and regulations. I attended those.

12 Q. Did those trade associations ever talk about the concept
13 of the courtesy notification?

14 A. Well, it was a national organization and the concept of
15 a courtesy notification varied from regulatory jurisdiction to
16 regulatory jurisdiction, so that it was on a local or state
17 basis.

18 Q. So some local or --

19 A. Some required it, and some said don't send them, and
20 some just ignored it.

21 Q. You have stated throughout this proceeding through your
22 Counsel and in the pleadings that you were using courtesy
23 notifications in this case. Why did you do that?

24 A. For the reason that I discussed earlier, because I

83

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1 thought it was to the -- since it involved a school and there
2 were parents, teachers who were aware of the project, that the
3 Agency was best served by being notified that a project was going
4 on even if it was not regulated. They would often get phone
5 calls that something was happening and they really needed to
6 be -- and it was to their best interest to be informed of it.

7 Q. In some of the notifications that are in the file and
8 specifically with the Highland facility, there is information
9 that is not filled out. How could that be the case? Why is it
10 that some of the information was not filled out?

11 A. The information either was not available at the time or
12 we considered that since it was a courtesy or a complimentary
13 notification that it did not require the same degree of detail of

14 one that involved a regulated project would.

15 Q. Okay. Mr. Lemire, has an EPA inspector -- excuse me --
16 from the Illinois EPA ever inspected any of the asbestos removal
17 projects that you have worked on in the State of Illinois?

18 A. During what period of time?

19 Q. The entire period of time that you have had EC&A?

20 A. Maybe once or twice.

21 Q. Out of how many projects?

22 A. Several hundred.

23 Q. Mr. Lemire, do you recall the date the first time that
24 you heard that a complaint was going to be filed against you by

84

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1 the State of Illinois?

2 A. It was in January or February of 1995, and initially the
3 complaint was sent to -- for some reason to one of our project
4 supervisors rather than to me at my office.

5 Q. When you learned that the State was intending to file a
6 complaint against you, what did you, as the president of EC&A do
7 then?

8 A. I called and got additional information.

9 Q. Who did you call?

10 A. Mr. Ali Aderi (spelled phonetically) I believe, who I
11 think was the Attorney General's Counsel at the time.

12 Q. Did you ever call Otto Kline?

13 A. Yes.

14 Q. About the complaint?

15 A. Right, I did.

16 Q. Did you ask him why the complaint was being filed?

17 A. I did.

18 Q. What did he say?

19 A. He said --

20 MS. PITROLO: Objection, Mr. Hearing Officer. What did he
21 say is hearsay.

22 MS. VOGEL: The same exception would apply but we don't
23 know what it is he is going to say to determine whether it does
24 apply. My belief is that it will, in fact, also be an admission

85

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1 by the party opponent. Perhaps we should hear what he says and
2 then determine whether or not whether the objection should be
3 sustained.

4 HEARING OFFICER LANGHOFF: Okay. I am going to overrule
5 the objection.

6 MS. VOGEL: Okay. Thank you.

7 Q. (By Ms. Vogel) What did Otto Kline tell you?

8 A. Otto Kline told me that Kevin Brown, the attorney for
9 the Illinois EPA, had gone into his office and taken a file, our
10 file from there against Otto Kline's recommendation.

11 Q. Thank you. Are you certain it was Kevin Brown that took
12 the file? Was that the name that was used?

13 A. I believe that was the name that was used at that time.

14 Q. Okay. Thank you.

15 A. I also was told by Otto Kline that he thought the matter
16 had been dropped.

17 Q. Mr. Lemire, what gave you the impression that the IEPA
18 might drop the matter when you also understood it to be the case
19 that a complaint was going to be filed?

20 A. Only what I was told by Mr. Kline.

21 Q. It sounds like you had a good relationship with Mr.
22 Kline?

23 A. I thought so.

24 Q. Mr. Lemire, of the projects that you performed in the

86

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1 State of Illinois for asbestos removal, have you ever done other
2 things like surveying and inspections?

3 A. Yes.

4 Q. Is it true that you have not only performed inspections
5 and surveys in the State of Illinois, but that you have performed
6 them of the Illinois Environmental Protection Agency offices?

7 A. That's correct.

8 Q. Do you recall which office that was?

9 A. It was --

10 MS. PITROLO: I am going to object to that, Mr. Hearing
11 Officer, based on relevance. Whether Mr. Lemire has performed

12 inspections of the Illinois EPA's offices has absolutely no
13 bearing on this case.

14 HEARING OFFICER LANGHOFF: Ms. Vogel?

15 MS. VOGEL: Well, I think it is a factor in mitigation. I
16 think that if the State of Illinois is going to retain Mr.
17 Lemire's firm to perform work for it that it would be relevant as
18 to whether or not they should be penalized.

19 HEARING OFFICER LANGHOFF: I am going to sustain the
20 objection.

21 MS. VOGEL: Okay.

22 Q. (By Ms. Vogel) Mr. Lemire, tell us why you have
23 strenuously contested this complaint?

24 A. Because I felt that the complaint was unjustified,

87

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1 unwarranted. The complaint was filed based on five compliance
2 inquiry letters that I had believed were closed matters. The
3 time period from the last CIL and the first to the time of the
4 complaint was between a year and a few months to almost four
5 years. I had attended seminars and I had heard the officials
6 from the Illinois EPA speak, including the Director, Mary Gatey.
7 I had a copy of her vision statement. And I was lead to believe
8 from her own words that the policies and the vision regarding
9 enforcement and compliance were that actions were to be taken
10 promptly in a timely manner and would be reserved only for the
11 most serious matters. So to put it bluntly, when this happened I

12 was blown away. And I know Mr. Brown is smirking about this, but
13 that's the way I felt about it, for the record.

14 MR. BROWN: Do I get an opportunity to respond?

15 MS. VOGEL: We can call you as a witness.

16 MS. PITROLO: Respondent's Counsel is also smirking.

17 MS. VOGEL: At this time I have made a copy of the excerpt
18 of the EPA's Four Year Strategy for Environmental Progress. I
19 have the original. I have made a copy for entering into the
20 record. At this time I will show Counsel the pages I would like
21 to enter into the record.

22 MS. PITROLO: Mr. Hearing Officer, I am going to have to
23 reserve any objections I have to this to wait to see what the
24 relevance would possibly be for this document.

88

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1-800-244-0190

1 HEARING OFFICER LANGHOFF: Okay. Thank you, Counsel.

2 MS. VOGEL: At this time I would like to mark three pages
3 of the Four Year Strategy for Environmental Progress as
4 Respondent's Exhibit Number 2. This document purports to be
5 created by the Illinois Environmental Protection Agency, and it
6 appears on Illinois Environmental Protection Agency letterhead.

7 (Whereupon said document was duly marked for purposes of
8 identification as Respondent's Exhibit 2 as of this date.)

9 Q. (By Ms. Vogel) Mr. Lemire, you testified that you had an
10 understanding about the Illinois Environmental Protection

11 Agency's enforcement policy. Is it possible that you got that
12 understanding from this document that I am now showing you?

13 A. Yes.

14 Q. Could you read for the record the provisions on page 24
15 that are underlined?

16 A. Enforcement action is taken on a timely and appropriate
17 basis. This is the vision statement for 1995. A streamlined
18 enforcement process is established that serves as an effective
19 deterrent to noncompliance while ensuring that the effected
20 parties are treated in a fair and consistent manner. Legislative
21 authority -- authorization of administrative orders is in place
22 to handle less significant cases, reserving legal action for the
23 most significant cases.

24 MS. VOGEL: Thank you. If there is no objection to this

89

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1 document, I would like to have it admitted as Respondent's
2 Exhibit Number 2.

3 MS. PITROLO: No objection, Mr. Hearing Officer.

4 HEARING OFFICER LANGHOFF: All right.

5 (Whereupon said document was admitted into evidence as
6 Respondent's Exhibit 2 as of this date.)

7 Q. (By Ms. Vogel) Mr. Lemire, when the complaint was filed
8 against you, was EC&A in compliance with all of the asbestos
9 notification requirements?

10 A. Yes.

11 Q. How many -- the complaint was filed in 1995. How many
12 asbestos removal projects had you done since 1995?
13 A. In the State of Illinois?
14 Q. Yes.
15 A. Since --
16 Q. Since 1995?
17 A. How many have we done since 1995?
18 Q. Yes.
19 A. Probably in the State of Illinois 50 to 75 per year.
20 Q. Okay. And from 1991 until 1995, how many did you do?
21 A. About the same number per year.
22 Q. About the same throughout?
23 A. Yes.
24 Q. Have you ever received any other CILs, compliance

90

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1 inquiry letters, other than the ones at issue in this proceeding?
2 A. No.
3 Q. Has EC&A's projects in Illinois ever resulted in a
4 finding of violation under any environmental law regulation?
5 A. No.
6 Q. No?
7 A. Other than the ones that are the subject of this
8 hearing.
9 Q. Has any of EC&A's removal techniques or methods ever

10 been found to be in violation of Illinois law?

11 A. Never.

12 MS. VOGEL: All right. At this time I have no further
13 questions of Mr. Lemire.

14 HEARING OFFICER LANGHOFF: All right.

15 MS. PITROLO: May I have Respondent's Exhibit Number 1,
16 please?

17 MS. VOGEL: Respondent's Exhibit Number 1?

18 MS. PITROLO: Yes, that's correct.

19 THE WITNESS: I could use a glass of water.

20 HEARING OFFICER LANGHOFF: We will take a minute and get a
21 glass of water.

22 (Whereupon a short recess was taken.)

23 HEARING OFFICER LANGHOFF: We are back on the record. Go
24 ahead, please, Ms. Pitrolo.

91

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1-800-244-0190

1 MS. PITROLO: Thank you, Mr. Hearing Officer.

2 CROSS EXAMINATION

3 BY MS. PITROLO:

4 Q. Mr. Lemire, I am going to show you Respondent's Exhibit
5 Number 1, which is the purported revised notification of
6 demolition and renovation which appears to be a xerox copy of
7 People's Exhibit Number 1. I am going to call your attention to
8 block 17 of that document.

9 A. You said 17?

10 Q. Yes, it is the second page.
11 A. Okay. Yes.
12 Q. Where the signatures are.
13 A. Yes.
14 Q. You did not recognize your signature on People's Exhibit
15 Number 1. Do you recognize your signature on this document?
16 A. No.
17 Q. You don't recognize your signature on that document
18 either?
19 A. No.
20 Q. But that is your name at block 17?
21 A. That is my name, that is correct.
22 Q. Can I call your attention now to the first page, block
23 seven?
24 A. Yes.

92

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1 Q. What does it state in block seven?
2 A. Approximate amount of asbestos, including regulated ACM
3 to be removed, that is number one. Number two, category one ACM
4 not removed, and then three, category two ACM not removed.
5 Q. I am going to call your attention specifically to the
6 column entitled RACM to be removed?
7 A. Yes.
8 Q. What is shown under that column?

9 A. 2,000 square feet.

10 Q. Is there anything written in longhand in front of that
11 column?

12 A. Floor tile and mastic.

13 Q. So that was written in on this document?

14 A. Yes.

15 Q. So if, in fact, there was only category one ACM to be
16 removed you could have written that in longhand there or whoever
17 prepared this for you could have?

18 A. Could you repeat that question?

19 Q. Yes, sir. You have written in or your agent has written
20 in floor tile and mastic?

21 A. Yes.

22 Q. So you could have written in in that column category one
23 ACM to be removed, could you not have?

24 A. I suppose so.

93

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1 Q. Okay. But under RACM to be removed what is in that
2 column?

3 A. 2,000 square feet.

4 Q. And under the signature in block 17, I call your
5 attention to that again. Whose name is in that signature?

6 A. Mine.

7 Q. And could you read what is above that signature, sir?

8 A. In 17?

9 Q. In 17.

10 A. I certify that the above information is correct.

11 Q. Thank you, Mr. Lemire. You said you were familiar with
12 the notification requirements under the NESHAP, Mr. Lemire?

13 A. I became aware of them, yes. They were pretty new at
14 this point.

15 Q. In all of your reading of the NESHAP notification
16 requirements, have you ever seen the words courtesy notice in the
17 NESHAP requirements?

18 A. I don't recall.

19 Q. And under block 17, the one that has your name filled in
20 below it, the signature that you do not recognize, it is
21 certified that the information contained in this notification is
22 correct; is it not?

23 MS. VOGEL: This is asked and answered. This has to be the
24 third or fourth time that she has brought this up.

94

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1 MS. PITROLO: Mr. Lemire has stated that he just provided
2 this as a courtesy notice, and that it was nothing more than just
3 a curtesy to the EPA. However, there is a signature in the block
4 with his name on it that says that the information is correct.
5 That's why I am asking the question again.

6 HEARING OFFICER LANGHOFF: I am going to allow the
7 question.

8 MS. PITROLO: Thank you, Mr. Hearing Officer.

9 THE WITNESS: Would you repeat the question, please?

10 Q. (By Ms. Pitrolo) Yes, sir. Under the asbestos NESHAP
11 have you ever seen the phrase courtesy notes?

12 A. Not that I recall.

13 Q. In block 17, the block that bears your name, what does
14 it say?

15 A. It says W. A. Lemire.

16 Q. And the statement above that?

17 A. I certify that the above information is correct.

18 Q. Therefore, there is a certification that this
19 information is correct and not that it is just a courtesy notice
20 to inform the EPA that there may or may not be asbestos at the
21 site; is that correct?

22 A. I am sorry. I don't understand the question.

23 Q. You have stated, Mr. Lemire, that you provided this as a
24 courtesy notice to the EPA?

95

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1 A. Yes.

2 Q. You have also stated that there is no such terminology
3 in the NESHAP or that you are unaware if there is any terminology
4 like that in the NESHAP. You have also stated that the block
5 that bears your name states that you certified that the
6 information contained in that document is correct.

7 Again, I ask you, Mr. Lemire, is that consistent with it

8 being a courtesy notice?

9 A. Is what consistent?

10 Q. Your statement that the information that you certify is
11 correct?

12 A. I would always sign, courtesy or not.

13 Q. I see. So, Mr. Lemire, what you are stating is that you
14 would go ahead and sign any notification that was put in front of
15 you and --

16 MS. PITROLO: I object. I object. First of all, I am
17 objecting on the basis that -- first, she is harassing him and,
18 secondly, she -- her question is wrong. I certify, that block is
19 signed by Janie Geiger, not by Mr. Lemire.

20 MS. PITROLO: Ms. Vogel, if you would focus on what I have
21 handed your witness.

22 MS. VOGEL: I focus just fine. I think you have missed it.

23 MS. PITROLO: Ms. Vogel, I have handed him Respondent's
24 Exhibit Number 1.

96

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1 MS. VOGEL: Yes, I understand.

2 MS. PITROLO: The exhibit that you placed into evidence.

3 MS. VOGEL: I understand that.

4 MS. PITROLO: The signature block on block 17 of the
5 document that you placed into evidence has Mr. Lemire's name in
6 block 17, not Janie Geiger.

7 HEARING OFFICER LANGHOFF: Okay. Thank you, Counsel. Ms.
8 Pitrolo, I would ask that you maybe remain at your table for the
9 questions unless you are going to approach the witness, so that
10 there is no appearance of harassing the witness. I am going to
11 instruct the witness to -- is there an outstanding --

12 MS. PITROLO: Perhaps it would -- it would be helpful for
13 me if you would repeat Mr. Lemire's last answer to me

14 (Whereupon the requested portion of the record was read
15 back by the Reporter.)

16 THE WITNESS: No, I would not differentiate between a
17 courtesy notification and one involving a regulated project.
18 That is what I meant.

19 Q. (By Ms. Pitrolo) Mr. Lemire, once again I am going to
20 ask you, in the block that bears your signature under 17 it says
21 that you certify that the information is correct. You are now
22 stating that this information was not correct; is that not true?

23 A. No, I am not saying that.

24 Q. Oh, then the information that was in the notification

97

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1 that is before you is correct?

2 A. I don't understand your question.

3 Q. Okay. I am going to walk you through it again, Mr.
4 Lemire.

5 HEARING OFFICER LANGHOFF: Ms. Pitrolo, would you please --

6 MS. PITROLO: I am sorry, Mr. Hearing Officer.

7 THE WITNESS: I could back up.

8 Q. (By Ms. Pitrolo) In block seven, Mr. Lemire, does it not
9 state that there is 2,000 square feet of RACM to be removed?

10 A. Yes.

11 Q. In block 17 where it states I certify that the above
12 information is correct, does that block not bear your name?

13 A. It bears my name.

14 Q. So again I ask you, Mr. Lemire, have you signed this
15 document without knowing that that information is correct or are
16 you now saying that it is incorrect?

17 A. I am not saying either. The signature was affixed by
18 Janie Geiger. This was eight, nine years ago.

19 Q. Ms. Janie Geiger affixed your signature --

20 A. It appears that way.

21 Q. -- to the document?

22 A. It appears that way.

23 Q. I am going to ask you again, Mr. Lemire, Ms. Geiger was
24 your agent in the employ of --

98

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1 A. She was a secretary, yes.

2 Q. -- Environmental Control and Abatement? Was she
3 authorized to affix your signature to this document?

4 A. Yes.

5 Q. Thank you, Mr. Lemire. Mr. Lemire, I am going to show

6 you a document that I have labeled as People's Exhibit 2.

7 (Whereupon said document was duly marked for purposes of
8 identification as People's Exhibit 2 as of this date.)

9 Q. (By Ms. Pitrolo) I am going to ask you if you recognize
10 that document.

11 A. Yes.

12 Q. Thank you, Mr. Lemire. Can you tell us what this
13 document is?

14 A. It is a letter to Otto Kline, head of the asbestos
15 demolition and renovation field operations section.

16 Q. What is it in response to, Mr. Lemire?

17 A. It is in response to the compliance inquiry letter at
18 the Highland Junior High School.

19 Q. In that document, Mr. Lemire, do you -- this was in
20 response to a compliance inquiry letter that EC&A received from
21 the Environmental Protection Agency; is that correct?

22 A. That's correct.

23 Q. In that letter, Mr. Lemire, do you anywhere state that
24 the material that was removed from the Highland site was category

99

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1 one nonfriable asbestos and not regulated asbestos containing
2 material?

3 A. No.

4 Q. In fact, could you read to me the statement at the
5 beginning of paragraph two beginning with nevertheless?

6 A. Nevertheless, we realize that this is our
7 responsibility, referring to notifications being sent in a timely
8 manner, and have taken corrective action specifically having the
9 envelope stamped by hand at the post office at the appropriate
10 time.

11 Q. So when the EPA --

12 A. And then -- I am sorry.

13 Q. I am sorry. Go ahead.

14 A. Okay. And then I just said we appreciate your taking
15 the time to discuss this with us.

16 Q. Is this your signature at the bottom, Mr. Lemire?

17 A. Yes.

18 Q. So in response to a compliance inquiry letter you
19 received from the EPA following the improper -- untimely
20 notification, you did not raise the issue of whether regulated
21 asbestos containing material was or was not at the site?

22 A. No, I had a --

23 Q. That is sufficient, Mr. Lemire. You have answered my
24 question?

100

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1 MS. VOGEL: Can the witness please finish his answer.

2 HEARING OFFICER LANGHOFF: All that question required was a
3 yes or no answer, Mr. Hearing Officer.

4 HEARING OFFICER LANGHOFF: The question has been answered.

5 You can bring that up on --

6 MS. VOGEL: So that I may be able to do this on redirect,
7 may I ask the court reporter to read back the question.

8 HEARING OFFICER LANGHOFF: Certainly.

9 (Whereupon the requested portion of the record was read
10 back by the Reporter.)

11 Q. (By Ms. Pitrolo) Mr. Lemire, I think you stated that you
12 were never at the Highland site; is that correct?

13 A. For this particular project.

14 Q. So you have no personal knowledge of what occurred at
15 the Highland site because you were never there?

16 A. No, I had to rely on others --

17 Q. Yes.

18 A. -- who worked for me.

19 Q. Thank you, Mr. Lemire. So you can't state whether spud
20 bars were used to remove the floor tile?

21 A. Well, I know what kind of equipment we owned for that
22 and I know no special equipment was purchased for the project.

23 Q. Do you consider a spud bar a special piece of equipment?

24 A. It is a piece of equipment which we own.

101

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1 Q. You do own spud bars? Do you own pry bars?

2 A. Yes.

3 Q. So you do not know whether spud bars or pry bars were
4 used to pry up the tile at the site?

5 A. Well, I hope they didn't use pry bars, because they are
6 only about an inch and a half --

7 Q. Mr. Lemire, all that required was a yes or no answer.
8 Do you know whether spud bars or pry bars were used at the site,
9 of your own knowledge?

10 A. I don't know.

11 Q. Thank you, Mr. Lemire. So you cannot of your own
12 personal knowledge state whether the floor tile and mastic was
13 rendered friable or not because you were not at the site?

14 A. I was not at the site.

15 Q. Thank you, Mr. Lemire. Mr. Lemire, the notification
16 that was provided to the Illinois EPA, the notification labeled
17 People's Exhibit Number 1, that was prior -- that was supplied to
18 the EPA untimely, however, it was supplied to the EPA prior to
19 work beginning at the site; is that not true?

20 A. That's correct.

21 MS. VOGEL: Pardon me. I have an objection to that
22 question. It is compound. Could you break it down. I am not
23 sure what his answer goes to.

24 MS. PITROLO: All right. Certainly.

102

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1 Q. (By Ms. Pitrolo) Did you provide People's Exhibit Number
2 1 to the Illinois EPA, Mr. Lemire?

3 A. Yes.

4 Q. And was People's Exhibit Number 1 provided to the
5 Illinois EPA prior to work beginning at the Highland site?

6 A. Yes.

7 Q. So the information that would be contained in People's
8 Exhibit Number 1 would have to be based on a site inspection made
9 prior to the notification being filled out; is that correct?

10 A. That's correct.

11 Q. Was such a site inspection actually performed, Mr.
12 Lemire?

13 A. Jeff Lobner would have performed the inspection.

14 Q. And so this form would have been filled out based on Mr.
15 Lobner's inspection of the site?

16 A. Yes.

17 Q. And Mr. Lobner, then, his information would be used to
18 fill out the block in form seven that floor file and mastic,
19 2,000 square feet of regulated asbestos containing material would
20 be removed?

21 A. Yes.

22 Q. Thank you, Mr. Lemire.

23 MS. PITROLO: May I see Respondent's Exhibit Number 2?

24 Thank you, Mr. Hearing Officer.

103

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1 Q. (By Ms. Pitrolo) Mr. Lemire, this document was entered
2 into evidence by respondent's Counsel, and it is a four year
3 strategy for the Illinois Environmental Protection Agency. You

4 read a segment of that stating that legislative authorization of
5 administrative orders is in place to handle less significant
6 cases reserving legal action for the most significant cases. Did
7 you not read that into the record, sir?

8 A. I did.

9 Q. Thank you. Mr. Lemire, I am going to now ask you
10 regarding that statement that you made, do you feel that the
11 allegations that the State has made against you are just minor,
12 picky, over-technical?

13 MS. VOGEL: That is a compound question. One at a time.

14 MS. PITROLO: Very well.

15 Q. (By Ms. Pitrolo) Mr. Lemire, do you feel that the
16 allegations that the State has made against you are simply minor
17 violations?

18 A. Yes.

19 Q. So you feel that notification -- following the
20 notification requirements of the asbestos NESHAP is simply a
21 minor violation?

22 A. Are we speaking of the Highland project?

23 Q. I am speaking of all five allegations.

24 MS. VOGEL: I am sorry. I object. There is -- there is

104

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1 one site that has been resolved in respondent's favor. That gets
2 us down to four. We have one at issue today. That gets us down

3 to three. The Board has only ruled on summary judgment for
4 three.

5 MS. PITROLO: The Board has ruled on summary judgment for
6 three of the sites. The pendency before the Board is on the
7 fourth site. I will limit my question then to the four sites on
8 which the Board has decision making power.

9 HEARING OFFICER LANGHOFF: Thank you, Counsel.

10 Q. (By Ms. Pitrolo) Would you like me to repeat the
11 question?

12 A. Please.

13 Q. I am going to put it in context again for you, Mr.
14 Lemire. I am, again, reading from what was entered into evidence
15 as Respondent's Exhibit Number 2.

16 MS. VOGEL: I object. Please don't read it again.

17 MS. PITROLO: Mr. Lemire cannot remember how I asked the
18 question, so I am going to do it again for him.

19 HEARING OFFICER LANGHOFF: I will allow it.

20 MS. PITROLO: Thank you, sir.

21 Q. (By Ms. Pitrolo) Legislative authorization of
22 administrative orders is in place to handle less significant
23 cases, reserving legal action for the most significant cases.
24 This was entered into evidence on your behalf, sir.

105

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1 I will ask you again. Do you feel that the violations
2 alleged against you and your company are just minor violations?

3 A. Now, are we speaking of the Highland project?

4 Q. I am speaking of all four sites that are before the
5 Board today and of notification violations in general.

6 A. I believe they are.

7 Q. You believe they are minor?

8 A. Yes.

9 Q. Do you believe that they are picky?

10 A. It depends on your definition of picky.

11 Q. My definition of picky would be insignificant and
12 worthless to follow.

13 A. Insignificant and worthless? No, I think there is value
14 in regulation. I would not go so far as to call them worthless.

15 Q. However, you feel that these are just minor violations?

16 A. I feel that they are minor violations.

17 MS. PITROLO: Thank you, Mr. Lemire. That's all of the
18 questions I have.

19 HEARING OFFICER LANGHOFF: Ms. Vogel.

20 MS. VOGEL: Yes. Thank you.

21 REDIRECT EXAMINATION

22 BY MS. VOGEL:

23 Q. Mr. Lemire, regarding the Highland notification,
24 People's Exhibit Number 1, can the State determine whether or not

106

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1 the material removed at the site was friable based on the

2 information on that notification?

3 A. No.

4 Q. Thank you. So if the State -- is it your understanding
5 that the State or the inspector from the State did not visit the
6 Highland site?

7 A. It is my understanding that no one inspected the site.

8 Q. No one inspected the site?

9 A. No.

10 Q. Thank you. Mr. Lemire, are there other sites in the
11 State of Illinois that you have provided the Illinois EPA with
12 courtesy notifications?

13 A. Yes.

14 Q. Did you ever provide a courtesy notification and were
15 told by any representative of the State not to send them in?

16 A. That's correct.

17 Q. Who told you that?

18 A. Otto Kline.

19 Q. What did he say? Do you recall?

20 A. Otto Kline told me several years ago that if it involves
21 tile and mastic that is not going to be rendered friable, it is
22 in good condition, that he didn't want to hear about it.

23 Q. And when was that conversation held, a year,
24 approximately?

107

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1 A. In the early 1990s, somewhere in this period of time.

2 Q. Did you then discontinue your use of the courtesy
3 notification practice?

4 A. Yes.

5 Q. Did you discontinue your courtesy notification practice
6 after you received the compliance inquiry letter for the fifth
7 site at issue here, the most recent in time?

8 A. I am sorry. Your question is?

9 Q. Did you discontinue your courtesy notification practice
10 after -- what year did you discontinue your courtesy notification
11 practice? Do you remember?

12 A. It was somewhere in the mid 1990s, maybe a little bit
13 earlier.

14 Q. In the mid 1990s?

15 A. Yes, 1994, 1995, somewhere in there.

16 Q. And you have not received any compliance inquiry letters
17 since?

18 A. No.

19 Q. Okay. Thank you. Earlier Counsel for the State asked
20 you a question that said in response to a compliance inquiry
21 letter received from the IEPA, I assume regarding the Highland
22 site, you did not raise the issue of whether RACM was at the site
23 or not and you answered no. Could you explain to us further why
24 you did not raise it?

1 A. Because the compliance inquiry letter addressed the
2 matter of timeliness of the notification.

3 Q. Okay. Thank you. If EC&A -- well, pardon me. Strike
4 that.

5 If the EC&A sent in a letter -- excuse me -- a notification
6 to the State indicating that the material removed was category
7 one nonfriable ACM, but during the process it didn't become
8 friable, is there any obligation to then go back and tell the
9 Agency that they ended up removing something that was not
10 regulated asbestos containing material?

11 A. No.

12 MS. VOGEL: Thank you. I have no more questions for Mr.
13 Lemire.

14 HEARING OFFICER LANGHOFF: Thank you. Ms. Pitrolo?

15 MS. PITROLO: Thank you, Mr. Hearing Officer.

16 RE CROSS EXAMINATION

17 BY MS. PITROLO:

18 Q. Mr. Lemire, do you still have People's Exhibit Number 1
19 in front of you? That is the notification of demolition and
20 renovation.

21 A. Yes, I do.

22 Q. Again, Mr. Lemire, I am going to ask you if in block
23 seven it says regulated asbestos containing material to be
24 removed, RACM to be removed, 2,000 square feet. Does it say

1 that, Mr. Lemire?

2 A. Yes.

3 Q. In response to your Counsel's question, is there any way
4 the State could tell that regulated asbestos containing material
5 was at the site? Would this not provide notice to the State that
6 regulated asbestos containing material was at the site, Mr.
7 Lemire?

8 A. I am sorry? Are you saying does this indicate that --

9 Q. That there was regulated asbestos containing material at
10 the site?

11 A. The column indicates 2,000 square feet.

12 Q. Thank you, Mr. Lemire. Now, Mr. Lemire, I am going to
13 turn your attention to People's Exhibit Number 2. That is the
14 letter from EC&A to Mr. Otto Kline. Your counsel asked you why
15 you didn't state in that letter that there was no regulated
16 asbestos containing material at the site, and you stated.

17 MS. VOGEL: Strike that. I object. I did not ask him that
18 question. I would like to have it read back.

19 HEARING OFFICER LANGHOFF: Ms. Pitrolo?

20 MS. PITROLO: I have no objection to having it read back,
21 Mr. Langhoff.

22 HEARING OFFICER LANGHOFF: Would you read that back,
23 please.

24 MS. PITROLO: She asked Mr. Lemire a question pertaining to

1 why he did not state in the letter to Mr. Otto Kline that there
2 was no regulated asbestos containing material at the site.

3 (Whereupon the Reporter searched for the requested portion
4 of the record.)

5 HEARING OFFICER LANGHOFF: Can you rephrase?

6 Q. (By Ms. Pitrolo) People's Exhibit Number 2, do you have
7 that in front of you?

8 A. Yes, I do.

9 Q. Why did you not raise the issue of regulated asbestos
10 containing material in that letter?

11 A. I was addressing specifically the issue that was in the
12 compliance inquiry letter.

13 Q. What was that issue, Mr. Lemire?

14 A. About the timeliness of the notification.

15 Q. So you are stating that the only issue that was raised
16 in the compliance inquiry letter was the timeliness of the
17 notification?

18 A. I believe so.

19 MS. PITROLO: May I approach the witness?

20 HEARING OFFICER LANGHOFF: Yes.

21 Q. (By Ms. Pitrolo) I am going to show you a document that
22 is labeled People's Exhibit Number 3.

23 (Whereupon said document was duly marked for purposes of
24 identification as People's Exhibit 3 as of this date.)

1 Q. (By Ms. Pitrolo) Do you recognize this document, Mr.
2 Lemire?

3 A. It is a compliance inquiry letter, yes.

4 Q. Specifically, it is the compliance inquiry letter that
5 was sent to Environmental Control and Abatement by the Illinois
6 Environmental Protection Agency regarding the Highland site. Can
7 I direct your attention to the last page of that document, Mr.
8 Lemire, where it says the following violations were observed?

9 A. Yes.

10 Q. In the second paragraph does it not state that not only
11 was there not a ten day working notice but procedure, including
12 analytical method, if appropriate, used to detect the presence of
13 asbestos material?

14 A. Yes.

15 Q. So the presence of asbestos containing material was at
16 issue in this compliance inquiry letter, was it not, Mr. Lemire?

17 A. Well, this is the compliance inquiry letter. As I
18 recall, we may have discussed whether or not this was a regulated
19 project in my telephone conversation with Mr. Kline, and when I
20 wrote back he probably said just, you know, address the
21 timeliness manner of it, because I didn't discuss these other
22 things.

23 Q. Mr. Lemire, the fact remains that you discussed the
24 timeliness in your response and you did not discuss whether

1 regulated asbestos containing material was present in your
2 response; is --

3 A. No.

4 Q. -- that correct? And both issues were raised in the
5 compliance inquiry letter?

6 A. Well, the issue of whether or not it is regulated
7 material was not in the compliance inquiry letter. The
8 analytical method, procedure, under B was indicated.

9 Q. In other words, used to detect the presence of asbestos
10 material?

11 A. Yes.

12 Q. Thank you, Mr. Lemire. I have one more issue, Mr.
13 Lemire, that I want to bring out. I am going to show you a
14 document that I am marking People's Exhibit Number 4.

15 (Whereupon said document was duly marked for purposes of
16 identification as People's Exhibit 4 as of this date.)

17 Q. (By Ms. Pitrolo) Before I leave this -- I am sorry -- I
18 am going to ask you one more question about the compliance
19 inquiry letter before I leave that document.

20 On the final paragraph on the first page, does it not state
21 the Agency hereby offers you the opportunity to meet with the
22 appropriate Agency representatives within 30 days of this notice?

23 A. That's correct.

24 Q. So you had the opportunity to meet with the Agency

1 representatives?

2 A. Yes, I did.

3 Q. And you did not do so?

4 A. I called and asked Mr. Kline if he thought a meeting on
5 this matter would be a good idea, and he said, no, it was not
6 necessary.

7 Q. So you had the opportunity to meet had you wanted to?

8 A. I guess if I had forced the issue.

9 Q. Thank you, Mr. Lemire. I am going to show you one last
10 document that is labeled People's Exhibit Number 4. Do you
11 recognize that, Mr. Lemire?

12 A. Yes.

13 Q. What is it?

14 A. It is an article that I had written for a publication
15 called Commercial Renovation.

16 Q. And what time frame did you write this article, sir?

17 A. It was printed -- it was reprinted in February of 1992.

18 Q. It was reprinted in February of 1992?

19 A. Yes.

20 Q. When was it first published, do you know?

21 A. I don't know.

22 Q. It would have been around that time or, obviously, prior
23 to that date?

24 A. Prior to that time.

1 Q. So right about the time that these violations occurred;
2 is that not correct?

3 MS. VOGEL: I object. What violations? Are we talking
4 only about Highland.

5 MS. PITROLO: The violations that occurred, occurred
6 between 1991 and 1993. I think we can all agree that 1992 falls
7 between those dates.

8 Q. (By Ms. Pitrolo) Mr. Lemire, I am going to turn your
9 attention to page two of that document, the second page. The
10 very second paragraph on that page beginning with the word,
11 first, could you read that for us, please, the first two
12 sentences, please?

13 A. First, any new laws and regulations are stricter and
14 broader than the ones they supercede or replace.

15 Q. The next sentence is the relevant one, sir.

16 A. Okay. The recently updated National Emission Standards
17 for Hazardous Air Pollutants, NESHAP, for example, requires that
18 inspection for asbestos containing materials must be performed
19 prior to any building renovation or demolition.

20 Q. Thank you, sir. So your statement that you were unaware
21 of a lot of the requirements of the new NESHAP at the time that
22 these violations occurred would appear to be contradicted by your
23 article?

24 MS. VOGEL: Objection.

1 HEARING OFFICER LANGHOFF: On what grounds?

2 MS. VOGEL: The question, first of all, is leading.

3 MS. PITROLO: This is cross-examination, Mr. Langhoff. I
4 am allowed to --

5 MS. VOGEL: Normally it would be permissible, but I believe
6 that there are simpler ways of asking that question without
7 making a compound question, as well.

8 MS. PITROLO: I can rephrase that question if you would
9 like, Mr. Langhoff.

10 HEARING OFFICER LANGHOFF: Thank you.

11 Q. (By Ms. Pitrolo) Mr. Lemire, by virtue of the fact that
12 you were writing an article regarding the new NESHAP, doesn't
13 that indicate that you were sufficiently well versed in the terms
14 of the NESHAP to show that you were well aware of the contents?

15 A. The article, if it was -- if it first appeared in
16 February of 1992, that is about eight months after the Highland
17 project and probably about a year and a half after the NESHAPS
18 were revised, and by then everybody had a pretty thorough
19 understanding of what was there.

20 Q. The violations that were alleged in the People's
21 complaint happened between May of 1991 and October of 1993, and
22 as we have already all agreed, 1992 falls squarely in between
23 those two time frames.

24 I don't think that requires an answer, Mr. Lemire.

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1 MS. VOGEL: So now we are just making statements for the
2 record.

3 MS. PITROLO: Thank you, sir. I have no more questions of
4 this witness.

5 HEARING OFFICER LANGHOFF: Thank you, Counsel. Ms. Vogel?

6 MS. PITROLO: At this point in time I would like to move to
7 introduce People's Exhibits 2, 3 and 4 for the record.

8 MS. VOGEL: I have no objection.

9 HEARING OFFICER LANGHOFF: Thank you.

10 (Whereupon said documents were admitted into evidence as
11 People's Exhibits 2, 3 and 4 as of this date.)

12 HEARING OFFICER LANGHOFF: Ms. Vogel, do you have anything
13 further?

14 MS. VOGEL: I have just one follow-up question regarding
15 People's Exhibit Number 3.

16 FURTHER REDIRECT EXAMINATION

17 BY MS. VOGEL:

18 Q. Mr. Lemire, under the section titled, on page three, it
19 appears to be attachment one, the following violations were
20 observed, and then it indicates that 40 CFR 61.145 (b)(4), the
21 procedure including analytical method to detect the presence of
22 asbestos containing materials. Has it ever been an issue in this
23 case that the material that was removed at Highland was asbestos
24 containing material?

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1 A. No.

2 Q. So you agree that it is, in fact, asbestos containing
3 material?

4 A. Yes.

5 Q. Does the analytical method or any analytical method,
6 does it tell you whether or not the material is regulated
7 asbestos containing material?

8 A. The analytical method -- I am sorry. What is your
9 question again?

10 Q. Would it tell you whether it is regulated asbestos
11 containing material, or does the analytical method tell you --

12 A. It wouldn't give you the condition of the material that
13 was being analyzed.

14 Q. What would the analytical method tell you?

15 A. It would normally give you a percentage type -- by type
16 of various types of asbestos fibers and other substances that
17 would comprise the sample.

18 Q. So the analytical method has nothing to do with whether
19 the material is friable or not?

20 A. Not normally, no.

21 Q. Okay. Turning to this article that has been introduced
22 by the State as People's Exhibit Number 4, can you read for me
23 the title of this document into the record?

24 A. Asbestos Management and Abatement.

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1 Q. And the subtitle?

2 A. Making the Right Decisions in the Midst Of Confusion.

3 Q. What article was this -- what periodical was this
4 article written for, do you remember?

5 A. Commercial Renovation.

6 Q. Mr. Lemire, will you read for me into the record the
7 last paragraph of this article on page two?

8 A. We live in a time of uncertainty with regard to
9 environmental risks and liability and there is no guarantee that
10 any course of action will ward off future problems. As one
11 regulatory official recently put it, quote, the monkey is on the
12 building owners' back, unquote. Proactive programs and the
13 series of actions outlined above will go far to minimize
14 potential headaches and surprises.

15 MS. VOGEL: Thank you. I have nothing further for Mr.
16 Lemire.

17 HEARING OFFICER LANGHOFF: Ms. Pitrolo?

18 MS. PITROLO: I have nothing further, Mr. Hearing Officer.

19 HEARING OFFICER LANGHOFF: Thank you, Mr. Lemire.

20 (The witness left the stand.)

21 HEARING OFFICER LANGHOFF: Okay. Any other witnesses, Ms.
22 Vogel?

23 MS. VOGEL: No, I have no other witnesses. I would like
24 to, though, recall to the stand Mr. Halford, if I may.

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1 HEARING OFFICER LANGHOFF: Mr. Halford, please take a seat
2 up here.

3 Would you swear the witness again, please.

4 (Whereupon the witness was sworn by the Notary Public.)

5 MS. VOGEL: Mr. Hearing Officer, I will make this brief so
6 that we can wrap this up.

7 D A L E H A L F O R D,
8 having been first duly sworn by the Notary Public, saith as
9 follows:

10 DIRECT EXAMINATION

11 BY MS. VOGEL:

12 Q. Mr. Halford, when the Agency today, in the year 2000,
13 becomes aware of an alleged violation of the NESHAP, specifically
14 with regard to notification, if you can speak to that --

15 MS. PITROLO: I will object to that, Mr. Langhoff. This
16 has definitely no relevance on any of the issues that are before
17 the Board, whether a violation occurred, anything about penalty.
18 How the Agency does business today has nothing to do with the
19 violations that occurred from 1991 to 1993.

20 HEARING OFFICER LANGHOFF: Ms. Vogel?

21 MS. VOGEL: I have not even finished my question. I didn't
22 even finish the question.

23 HEARING OFFICER LANGHOFF: Well, based on the direction the

24 question was going, I am prepared to rule on the objection. Do

120

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1 you have anything?

2 MS. VOGEL: Well, if you are going to rule on the objection
3 before I even finish the question I would like to say that where
4 I was going is I would like to know now how much time passes when
5 violations are learned of at the Agency and when complaints are
6 brought.

7 HEARING OFFICER LANGHOFF: Do you have any arguments with
8 regard to the relevance of the question?

9 MS. VOGEL: It goes to the issue of delay, and it goes to
10 the issue of respondent's compliance history and it goes to the
11 issue of mitigating factor. It also, by the way, goes to the
12 issue of the difficulty that we have had throughout this case in
13 that it has been nine years since Highland was brought up.

14 HEARING OFFICER LANGHOFF: Ms. Pitrolo?

15 MS. PITROLO: Yes, Mr. Langhoff, I would like to speak to
16 that issue. It is true that the State's case was brought in
17 1995. The respondent, however, has gone through changes of
18 attorneys, as has the Attorney General's Office, and we have been
19 involved in settlement negotiations for an extended period. And
20 the length of time, as you well know, between the time the case
21 is filed before the Board and the time the hearing is held is
22 often lengthy. That certainly has no bearing on the degree of
23 severity of the violations or whether or not the violations

24 occurred.

121

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1 HEARING OFFICER LANGHOFF: Anything in response as to the
2 relevancy of the question?

3 MS. VOGEL: Yes. I think it is important for the Board to
4 know the way that the Agency deals with violations and how they
5 reach agreement in these cases and how the respondent can know
6 for certain that something is over has changed significantly from
7 when this case was filed against my client. And I think that it
8 would be very good information for the Board to know the kinds of
9 time constraints that are now on the Agency in bringing their
10 cases.

11 MS. PITROLO: Again, Mr. Hearing Officer, I would like to
12 specifically state that there is no statute of limitations on any
13 of these violations. They were timely brought. They were timely
14 filed. The State has pursued this case in an expeditious manner,
15 as you can tell by the number of orders that have occurred
16 between 1995 and now.

17 HEARING OFFICER LANGHOFF: Thank you. I am going to
18 sustain the objection.

19 Do you have any further questions? Do you have another
20 question?

21 MS. VOGEL: No, I don't have any further questions. Thank
22 you very much, Mr. Halford.

23 HEARING OFFICER LANGHOFF: Do you have any further
24 witnesses, Ms. Vogel?

122

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1 MS. VOGEL: No, I am done. Thank you.

2 HEARING OFFICER LANGHOFF: Ms. Pitrolo?

3 MS. PITROLO: No, I have nothing further, Mr. Hearing
4 Officer.

5 HEARING OFFICER LANGHOFF: Okay. Ms. Vogel, closing
6 arguments?

7 MS. VOGEL: I would like to waive closing arguments. I
8 will address closing arguments in my brief.

9 HEARING OFFICER LANGHOFF: All right. Thank you. Ms.
10 Pitrolo?

11 MS. PITROLO: The State will do the same, Mr. Hearing
12 Officer.

13 HEARING OFFICER LANGHOFF: Okay. Thank you. At this time
14 I want to make sure that all of the exhibits have been introduced
15 and accepted, and that I have possession of all of them, so we
16 will go through that.

17 People's Exhibit Number 1 has been introduced and accepted
18 into the record.

19 Respondent's Exhibit Number 1 has been introduced and
20 accepted. Respondent's Exhibit Number 2 has been introduced and
21 accepted.

22 People's Exhibit Number 2 has been introduced and accepted.

23 People's Exhibit Number 3 and People's Exhibit Number 4 have been
24 introduced and accepted.

123

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1 Again, I would note for the record that members of the
2 public are encouraged and allowed to provide public comment if
3 they so choose. And seeing no members of the public here today,
4 there will be no comments.

5 I would like to go off the record for a moment to discuss
6 the availability of the record and the timing of post hearing
7 motions and arguments.

8 (Discussion off the record.)

9 HEARING OFFICER LANGHOFF: Okay. We are back on the
10 record.

11 As the transcript will be available on or about July 21st,
12 public comments and briefs, if any, are due Monday, August 21st.
13 The mail box rule set forth at 35 Illinois Administrative Code
14 101.102 (d) and 101.144 (c) will apply to any post hearing
15 filings. All post hearings comments must be filed in accordance
16 with Section 106.807 of the Board's procedural rules.

17 The transcript is usually put on the Board's web site
18 within a few days of the availability. I will note our web site
19 address is www.ipcb.state.il.us. After a couple of days have
20 passed if you still have any trouble accessing the transcript
21 from the web site, please call our office.

22 At this time the hearing is adjourned. I thank you all for
23 your participation.

24 MS. VOGEL: Thank you, Mr. Hearing Officer.

124

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1 MS. PITROLO: Thank you, Mr. Hearing Officer.
2 (The Hearing Exhibits were retained by Hearing Officer
3 Steven C. Langhoff.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for the
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that
7 the foregoing 124 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 11th of July A.D.,
9 2000, at 600 South Second Street, Springfield, Illinois, in the
10 case of People of the State of Illinois v. Environmental Control
11 and Abatement, Inc., in proceedings held before the Honorable
12 Steven C. Langhoff, Hearing Officer, and recorded in machine
13 shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed
15 my Notarial Seal this 21st day of July A.D., 2000.

16

17

18

19

20

Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

21

CSR License No. 084-003677

22 My Commission Expires: 03-02-2003

23

24

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126